



MONASH University  
Castan Centre for Human Rights Law

# HUMAN RIGHTS TRANSLATED 2.0

A Business Reference Guide

Prepared in collaboration with the  
Office of the United Nations High Commissioner for Human Rights  
and the United Nations Global Compact



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## [Castan Centre for Human Rights Law](#)

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The Castan Centre, based in the Law Faculty at Monash University, is a world-renowned academic centre using its human rights expertise to create a more just world where human rights are respected and protected, allowing people to pursue their lives in freedom and with dignity. The Centre's innovative approach to public engagement and passion for human rights are redefining how an academic institution can create important and lasting change.

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CHAPTER 1:  
**PREPARING TO USE  
THIS RESOURCE**





# INTRODUCTION

Business is increasingly recognising the importance of human rights. A [2015 survey](#) of The Economist Intelligence Unit found that a majority of business executives now recognise that business is an important player in respecting human rights, and that what their companies do – or fail to do – affects those rights. In the survey, 83 per cent of respondents agree (74 per cent of whom do so strongly) that human rights are a matter for business as well as governments. Hundreds of companies now publish human rights policies and embed human rights in relevant company processes. To date, over 8,800 companies in 146 countries are signatories to the UN Global Compact and have committed themselves to the UN Global Compact’s Ten Principles, including six principles that address human rights and labour standards.

Both reflecting and advancing the trend of increased business recognition of human rights as relevant to their operations, the United Nations Human Rights Council in 2011 unanimously endorsed<sup>1</sup> the [Guiding Principles on Business and Human Rights](#) (hereafter: the UN Guiding Principles) which sets out the responsibilities business have with regard to human rights. The UN Guiding Principles clarify that the scope of business’ responsibility to respect human rights extends, at a minimum, to those rights expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

These developments notwithstanding, many companies are still struggling to understand the meaning of human rights, how human rights may be relevant to their activities and what they can do to meet their responsibility to respect human rights set out in the UN Global Compact’s first principle and the UN Guiding Principles.

The purpose of this publication is to explain the meaning of universally recognised human rights in a way that makes sense to business. To aid the understanding of the different rights it will also illustrate, through the use of real world examples, how human rights apply

in a business context. It should be stressed that the examples are included for illustrative learning purposes only, and do not in any way constitute an endorsement or denunciation of the individual companies or of their human rights policies or practices.

## What are Human Rights?

The concept of human rights is as simple as it is powerful: that people have a right to be treated with dignity. Human rights are inherent in all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Every individual is entitled to enjoy human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Human rights are often expressed and guaranteed by law, in the form of treaties, customary international law, general principles and other sources of international law. International human rights law sets out obligations on States to act in certain ways or to refrain from certain acts, so as to promote and protect the human rights and fundamental freedoms of individuals or groups.<sup>2</sup>

The 1948 [Universal Declaration of Human Rights](#) was drawn up by representatives of many nations to prevent a recurrence of the atrocities of the Second World War and is the cornerstone of modern human rights law. At the World Conference on Human Rights in Vienna in 1993, all 171 participating countries reaffirmed their commitment to the aspirations expressed in the Declaration.

The Universal Declaration is codified in international law through the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), each of which has been ratified by over 160 States (over three-quarters of all nations). It is recognised that both sets of rights are indivisible and interdependent, and equally important. Collectively all three documents are known as the ‘International Bill of Human Rights’. The two Covenants form the basis of this publication.

<sup>1</sup> Human Rights Council Resolution 17/4.

<sup>2</sup> OHCHR: [Frequently Asked Questions about the Guiding Principles on Business and Human Rights](#) (2014).

### **The International Covenant on Civil and Political Rights**

Civil and political rights encompass rights to enjoy physical and spiritual freedom, fair treatment, and to participate meaningfully in the political process. They include the right to life, freedom from torture, freedom from slavery, the right to privacy, freedom from arbitrary detention, the right to a fair trial, freedom of religion, freedom of expression and assembly, as well as the rights of minorities and freedom from discrimination.

States that are parties to this Covenant are obliged to respect and protect the rights it articulates and, without discrimination, ensure their enjoyment by all individuals within their territory and under their jurisdiction. Companies also have a responsibility to respect these rights.

### **The International Covenant on Economic, Social and Cultural Rights**

Economic, social and cultural rights comprise employment rights, such as the right to a fair wage, the right to safe and healthy working conditions, and the right to form and join trade unions, and social rights such as the right to education, the right to an adequate standard of health, and adequate standard of living, as well as the right to participate in cultural life.

Economic, social and cultural rights largely relate to “freedom from want”. States that are parties to this Covenant are obliged to take steps towards the progressive realisation of the relevant rights, subject to the availability of resources. Thus, it is recognised that States may not be able to achieve the full realisation of the rights in this Covenant immediately, especially if they are underdeveloped. However, States have immediate obligations to take steps towards the full realisation of these rights, to the extent possible within their respective resource constraints. They also have immediate obligations to guarantee that economic, social and cultural rights are exercised without discrimination. Moreover, measures that reduce the existing level of enjoyment of a right, or a failure to ensure minimum essential elements of each right, breach the Covenant, unless a State can prove that such measures are dictated by a genuine lack of resources.

Companies are expected to respect economic and social rights, but that does not mean that they are expected to solve global problems, such as poverty. Instead, they are expected to ensure that they are not

interfering with the enjoyment of these rights, and, if a company finds that it has interfered with these rights, it should take remedial action. Likewise, when companies are asked to support these rights it means that they are being called on to make a meaningful contribution, for example by supporting human rights-related initiatives in the communities where they operate. Companies are not being asked or expected to take over a government obligation to ensure the fulfilment, for example, of the right to health.

### **Limits to rights and striking balances**

Few human rights are absolute. Some rights, such as the right to be free from torture, cannot be compromised under any circumstances. However, most civil and political rights can be restricted – although not arbitrarily – by States in exceptional circumstances, such as when limitations are provided by law and necessary to protect national security, public order, public health, public morals or the rights of others. The fulfilment by States of economic, social and cultural rights is, meanwhile, subject to available resources.

### **Other relevant instruments and standards**

The rights contained in the International Bill of Rights have been further elaborated in other international instruments and standards. These include instruments on the human rights of persons belonging to groups or populations that may need particular accommodation or protection in order to fully enjoy human rights without discrimination.<sup>3</sup> Depending on the circumstances of their operations, companies may need to consider these additional standards.<sup>4</sup>

In the sphere of human rights for workers, the International Labour Organisation’s [Declaration on Fundamental Principles and Rights at Work](#) commits all its member States to four categories of principles and rights: freedom of association and the right to collective bargaining; the elimination of compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These are covered by the eight core

<sup>3</sup> United Nations human rights instruments elaborating the rights of persons belonging to particular groups or populations: The International Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination against Women, The Convention on the Rights of the Child, The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, The Convention on the Rights of Persons with Disabilities, The United Nations Declaration on the Rights of Indigenous Peoples, The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

<sup>4</sup> OHCHR: [The Corporate Responsibility to Respect Human Rights: an Interpretive Guide](#) (2012).

conventions of the International Labour Organisation (ILO).

### UN human rights treaty bodies

Each of the Covenants, as well as the other core UN human rights treaties, is supervised, monitored and authoritatively interpreted by a UN treaty body. The Human Rights Committee is the treaty body for the ICCPR, and the Committee on Economic, Social and Cultural Rights is the treaty body for the ICESCR.

### The relevance of human rights to business

“Business can only flourish in societies in which human rights are respected, upheld and advanced. People are our greatest asset, and empowering them across our supply chain is not only the right thing to do, but also ensures a sustainable future for the business. Our ambition is to embed the promotion of human rights into every function, every role, and every corner of our organization.”

**Paul Polman, CEO, Unilever**

Business is a major contributor to economic growth around the world, and as an essential vehicle for human development; it helps underpin global human rights. An increasing number of companies now also make a substantive contribution to human rights by embedding international human rights standards into their business policies and practices. As reflected in the UN Global Compact’s principles and, more recently, the [2030 Agenda for Sustainable Development](#) and

its [Sustainable Development Goals](#), there is a growing expectation for companies to not only respect human rights, but also to explore opportunities to make a positive contribution in support of human rights.

At the same time, business activities can pose risks to the enjoyment of human rights, for example by not recognising the right of workers to form trade unions or through forcibly displacing communities without consultation and compensation to make way for a mining project. Indeed, experience shows that companies can and do infringe on human rights when they are not paying sufficient attention to human rights considerations.<sup>5</sup>

“In the digital environment, human rights impacts may arise in internal decisions on how to respond to government requests to restrict content or access customer information, the adoption of terms of service, design and engineering choices that implicate security and privacy, and decisions to provide or terminate services in a particular market.”

**David Kaye, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

<sup>5</sup> OHCHR: [The Corporate Responsibility to Respect Human Rights: an Interpretive Guide](#) (2012).

There is growing evidence of the benefits to business of respecting human rights. These include not only improved risk management with regard to litigation, but also the reduced chance of business disruptions, public campaigns and criticism, reputational harm, and harm to employee retention and recruitment. Businesses who respect human rights obtain greater access to business opportunities with governments, financiers and business customers and buyers, who increasingly recognise the reduced risk to themselves when working with a company that effectively manages risks to human rights.<sup>6</sup>

Another important benefit is the improved relationships with workers, communities and other stakeholders in societies, which in turn creates greater trust and a stronger social licence to operate. Respecting human rights also improves the company's ability to preserve their reputation if negative impacts do occur by having provided a better public understanding of their overall efforts to avoid such incidents.<sup>7</sup> It might also be a comparative advantage with a growing number of stock exchanges and public and private financial institutions scrutinising companies' non-financial performance, including with regard to human rights.<sup>8</sup> Additionally, research shows that millennials increasingly want to work for organisations that are ethical and committed to principled business. As such, companies that respect universal standards, such as on human rights and labour, have an edge in attracting young talent.

The understanding and integration of human rights in business practice will strengthen the positive role that business can play – both on its own and in partnership with the United Nations and other actors – towards a just, sustainable and inclusive global economy in which human rights are fully respected.

### **The UN Guiding Principles on Business and Human Rights**

## **“The Guiding Principles’ normative contribution lies not in the creation**

<sup>6</sup> Shift and Mazars: [UNGP Reporting Framework](#) (2015).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

**of new international law obligations but in elaborating the implications of existing standards and practices for states and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it could be improved.”**

### **Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights (2005-2011)**

The International Bill of Rights and other UN human rights instruments and standards impose human rights obligations on States. For decades, vigorous debate took place between scholars, civil society and business representatives about the extent, if any, to which these instruments imposed responsibilities for businesses. In 2011, the United Nations Human Rights Council clarified the respective duties and responsibilities of States and businesses with regard to human rights by unanimously endorsing the [United Nations Guiding Principles on Business and Human Rights](#) (UN Guiding Principles).

The UN Guiding Principles were developed by John Ruggie, who was the United Nations Secretary-General’s Special Representative on the issue of human rights and transnational corporations and other business enterprises from 2005 to 2011. Following six years of extensive research and a large number of multi-stakeholder and expert consultations all over the world, the Special Representative presented the Guiding Principles to the UN Human Rights Council in June 2011 for endorsement.

The UN Guiding Principles are founded on three pillars:

- The State duty to protect human rights against abuse by third parties, including business, through appropriate policies, legislation, regulations and adjudication;
- The corporate responsibility to respect human rights, meaning to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved;
- The need for greater access to effective remedy, both judicial and non-judicial, for victims of business-related human rights abuse.

Since their endorsement by the Human Rights Council, the UN Guiding Principles have been recognized by States, companies, industry networks, civil society organizations and other actors as providing substantial clarity and essential operational guidance to help both States and companies meet their respective duties and responsibilities.

**Mr. Pavel Sulyandziga, Chair, Working Group on the issue of human rights and transnational corporations and other business enterprises**

#### **The corporate responsibility to respect human rights**

The UN Guiding Principles clarify that the standard of responsibility for business with regard to human rights is to respect these rights, and they elaborate on the steps that companies must take to “know and show” that they do so.

Of particular importance for the purposes of this publication, the UN Guiding Principles specify that the corporate responsibility to respect refers to internationally recognised human rights – “understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work.”<sup>9</sup> It also emphasises that depending on the circumstances, businesses may need to consider additional standards.

This responsibility means companies must know their **adverse human rights impacts**, avoid infringing the human rights of others and address any potential or actual adverse human rights impacts they have caused or contributed to.

They cannot do so unless they have certain policies and processes in place. First, companies must adopt a **policy commitment** to meet the responsibility to respect human rights. Second, they must undertake ongoing **human rights due diligence** to identify, prevent, mitigate and account for their human rights impact. Finally, they must have processes in place to enable **remediation** for any adverse human rights impact they cause or contribute to.<sup>10</sup>

Corporate social responsibility is often understood as companies’ voluntary contributions to community development, charity and other social and environmental efforts. Adherence to the UN Guiding Principles is a global expectation of all companies, which may be distinguished from the voluntary efforts a company may decide to engage in subject to its other objectives and priorities and/or as part of its social or legal licence to operate in a particular situation.<sup>11</sup> The UN Guiding Principles explicitly recognise that companies may undertake commitments or activities to support and promote human rights, which may contribute to the enjoyment of these rights. But doing so does not offset their responsibility to respect human rights through their operations.

<sup>9</sup> Guiding Principle 12.

<sup>10</sup> OHCHR: [Frequently Asked Questions about the Guiding Principles on Business and Human Rights](#) (2014).

<sup>11</sup> Ibid.

“... the [corporate] responsibility to respect [human rights] is a baseline expectation, [and] a company cannot compensate for human rights harm by performing good deeds elsewhere ... ‘Doing no harm’ is not merely a passive responsibility for firms but may entail positive steps.”

**Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights (2005-2011)**

While the corporate responsibility to respect applies to all internationally recognised human rights, in practice, some rights will be more relevant or salient than others in particular industries and circumstances, and companies will need to pay more attention to them.<sup>12</sup> For example, the human rights risks that are most salient for businesses in the apparel sector with products made by workers in factories across several countries, will differ from those of companies in the extractive sector that have to relocate an indigenous community. But there is nothing in principle that precludes any company from causing or contributing to adverse impacts on any internationally recognised human right. It is therefore not possible to limit the application of the responsibility to respect human rights to a particular subset of rights for particular sectors.<sup>13</sup> The UN Guiding Principles make clear that a business should not focus exclusively on the most salient human rights issues and ignore others that might arise.

#### **The relationship between the UN Guiding Principles and the UN Global Compact Principles**

The UN Guiding Principles relating to the responsibility of businesses to respect human rights are of direct relevance to the commitment undertaken by UN Global Compact participants. Principles 1 and 2 of the UN Global Compact call upon companies to respect and support internationally proclaimed human rights and ensure they are not complicit in human rights abuses.

As a global standard applicable to all businesses, the UN Guiding Principles provide further conceptual and operational clarity for the two human rights principles championed by the UN Global Compact. They reinforce the UN Global Compact and provide an authoritative framework for participants on the policies and processes they should implement in order to ensure that they meet their responsibility to respect human rights.

“The UN Guiding Principles on Business and Human Rights provide a practical framework to implement the human rights commitments that companies make as part of becoming participants of the UN Global Compact”.

**Lise Kingo, Executive Director, UN Global Compact**

In addition to respect for human rights, participants in the UN Global Compact have committed to support the promotion of human rights, that is, to make a positive contribution to the realisation of human rights especially in ways that are relevant for their business. Such efforts can be through core business activities, social investment and philanthropy, public policy engagement and advocacy, and partnerships and collective action. Efforts to support human rights are a voluntary complement and not a substitute for the responsibility to respect human rights, which applies to all companies regardless of whether they are in the UN Global Compact.

<sup>12</sup> OHCHR: *The Corporate Responsibility to Respect Human Rights: an Interpretive Guide* (2012).

<sup>13</sup> Ibid.







# USER NOTES AND METHODOLOGY

This publication provides company managers and staff with essential knowledge of what human rights are and how they are relevant for business. It also outlines some key elements of what it means to respect and support human rights in practice. It is intended to help provide a foundation upon which companies can build the knowledge of their workforce about human rights and help strengthen the integration of human rights into their corporate culture, processes and business relationships.

## Turning principles into practice

This section provides an overview of a company's responsibility to respect human rights under the UN Guiding Principles. In particular, it outlines the necessary policies and processes that companies should adopt in order to know and show that they respect human rights.

For information on context or sector-specific guidance and tools to help with implementation of the UN Guiding Principles on particular human rights issues, please see the below resources:

- [UN Global Compact Library](#)
- [Office of the UN High Commissioner for Human Rights – Resources](#)
- [Business and Human Rights Resource Centre](#)

## Descriptions of the rights

Readers are guided through each of the rights contained in the UN treaties – the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) – and given a description of what each right means in general terms and how it may be

relevant to a company's activities. The descriptions take into account the text of the relevant treaty, as well as subsequent interpretations of the treaties by the relevant treaty body, in particular the General Comments.<sup>14</sup> The descriptions focus on those aspects of the rights of most relevance to companies. Occasionally, reference is also made to the Conventions of the International Labour Organization (ILO) where it can add to guidance from the relevant UN treaty body.

International human rights are elaborated in many other UN and regional treaties, conventions and declarations, some of which may already be familiar to business readers.<sup>15</sup> The authors have chosen to focus on the two 1966 Covenants because of their wide international acceptance and the fact that they articulate the broad spectrum of internationally recognised human rights contained in the Universal Declaration of Human Rights.

No attempt is made to rank the rights in order of relevance to business. While some rights (such as those on workplace health and safety) are likely to be priorities for all industries in all parts of the world, and other rights (such as freedom from retroactive criminal law) are unlikely to affect business, no definitive rules exist. For example, it is not uncommon to find that rights, such as the rights to freedom of religion or expression, may require a different corporate response from one sector to the next and from one location to another.

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<sup>14</sup> General Comments are interpretations or explanations of the requirements of the core human rights treaties and are issued by the UN treaty bodies. Most General Comments entail detailed explanations of the meaning of a particular right.

<sup>15</sup> Among the most notable are the Conventions mentioned in footnote 3 in addition to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of all Persons from Enforced Disappearance, and Conventions of the International Labour Organization (ILO), as well as the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and People's Rights and the Arab Charter of Human Rights.

“There are few if any internationally recognised rights business cannot impact – or be perceived to impact – in some manner. Therefore, companies should consider all such rights.”

**Professor John Ruggie, UN Secretary-General's Special Representative on Business and Human Rights (2005-2011)**

#### **Illustrative examples**

To bring these rights to reality, each description of a right is illustrated by one or more short real-life examples<sup>16</sup> demonstrating how the right has appeared in a business context. The examples are only provided to the extent that they are relevant to that particular right – other potential rights issues are omitted to avoid confusion.

No implication is intended regarding a company's human rights record outside the context of a given example. The objective is to extract lessons from the sometimes complex situations companies encounter around the world. The examples are not meant to represent the 'best' or 'worst' examples – they are simply chosen as appropriate examples that illustrate the real-life relevance of the right concerned.

Some of the illustrations address fluid situations, which may be subject to change. The examples are up to date, to the best of the authors' knowledge, as of June 2016. For information on any recent developments, readers are encouraged to visit the [Business and Human Rights Resource Centre](#), a leading independent resource on the subject. The website is updated hourly with news and reports about companies' human rights impacts worldwide – positive and negative.

<sup>16</sup> The exception is where a particular right has only slight relevance to the business community.

Few of the human rights challenges illustrated in the examples are clear-cut or have simple solutions. In a number of instances companies seem to have turned an ostensibly negative human rights impact around and have brought about long-term benefits, often by working collaboratively with industry peers or civil society groups. Some companies that have faced difficulties in one context have learnt from such encounters and put good practice models and management systems in place elsewhere to respect and promote human rights. On the other hand, some companies that have undertaken positive measures with regard to human rights in one context have been criticised by human rights groups regarding their actions in other contexts. Mixed records demonstrate that this is an evolving area and that observance of human rights by companies requires constant vigilance.

All material included in the examples is taken, without exception or favour, from information in the public domain. No judgements are made in favour of, or against, the companies or activist groups profiled. In the electronic version of this publication, links are supplied indicating the web-based sources from which the case study has been taken. A variety of sources have been used to show a range of perspectives on the issue, including, in many instances, company corporate responsibility sites. The use of a particular website should not be taken as an endorsement of that source.<sup>17</sup>

The aim of the illustrative examples is to offer insights for other companies that may find themselves in similar situations. We encourage readers to approach every case study with an eye to the lessons that emerge.

<sup>17</sup> In some circumstances, weblinks may be broken or go out of date. Information regarding the relevant case study should nevertheless be available using common search engines.

# GLOSSARY OF KEY SELECTED TERMS<sup>18</sup>

## **Actual human rights impact**

An “actual human rights impact” is an adverse impact that has already occurred or is occurring.

## **Complicity**

Complicity has both legal and non-legal meanings. As a legal matter, most national legislations prohibit complicity in the commission of a crime, and a number allow for the criminal liability of businesses in such cases. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime”.

Examples of non-legal “complicity” could be situations where a business is seen to benefit from abuses committed by others, such as when it reduces costs because of slave-like practices in its supply chain or fails to speak out in the face of abuse related to its own operations, products or services, despite there being principled reasons for it to do so. Even though companies have not yet been found complicit by a court of law for this kind of involvement in abuses, public opinion sets the bar lower and can inflict significant costs on them.

The human rights due diligence process should uncover risks of non-legal (or perceived) complicity, as well as legal complicity, and generate appropriate responses.

## **Due diligence**

Due diligence has been defined as “such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case”.<sup>19</sup> In the context of the UN Guiding Principles, human rights due diligence comprises an ongoing management process that a reasonable and prudent business needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.

## **Human rights risks**

A business enterprise’s human rights risks are any risks that its operations may lead to one or more adverse

human rights impacts. They therefore relate to its potential human rights impact. In traditional risk assessment, risk factors in both the consequences of an event (its severity) and its probability. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritise the order in which potential impacts are addressed in some circumstances. Importantly, an enterprise’s human rights risks are the risks that its operations pose to the enjoyment of human rights by others. This is separate from any risks that involvement in human rights impact may pose to the enterprise, although the two are increasingly related.

## **Potential human rights impact**

A potential human rights impact is an adverse impact that may occur but has not yet done so.

## **Leverage**

Leverage is an advantage that gives power to influence. In the context of the UN Guiding Principles, it refers to the ability of a business enterprise to effect change in the wrongful practices of another party that are causing or contributing to an adverse human rights impact.

## **Remediation/Remedy**

Remediation and remedy refer to both the processes of providing a remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

## **Salient human rights**

The most salient human rights for a business enterprise are those that stand out as being most at risk. This will typically vary according to its sector and operating context. The Guiding Principles make clear that an enterprise should not focus exclusively on the most salient human rights issues and ignore others that might arise. But the most salient rights will logically be the ones on which it concentrates its primary efforts.

<sup>18</sup> These definitions are the same as in the OHCHR publication from 2012, [The Corporate Responsibility to Respect Human Rights: an Interpretive Guide](#) (2012).

<sup>19</sup> Black’s Law Dictionary, 6th ed. (St. Paul, Minnesota, West, 1990).



The background of the page is an aerial photograph of a vibrant green field, possibly a rice paddy, with a blue diagonal overlay on the left side. The text is centered on the blue overlay.

CHAPTER 2:  
**TURNING PRINCIPLES  
INTO PRACTICE**



# TURNING PRINCIPLES INTO PRACTICE

This chapter explores key actions under the Corporate Responsibility to Respect Human Rights (Pillar II of the UN Guiding Principles) to ensure that a business does not have a negative impact on people's rights through its own activities and business relationships. While the [UN Guiding Principles](#) are focused on respecting human rights, they recognise that companies may undertake commitments or activities to support and promote human rights, such as those called for under the UN Global Compact.

A commitment to support human rights however does not eliminate a company's responsibility to respect human rights throughout its operations. The key actions outlined below consist of developing a human rights policy, conducting human rights due diligence and providing for, or cooperating in, remediation processes if the company has caused or contributed to a negative impact.

## Corporate Responsibility to Respect Human Rights

### Policy Commitment

Adopt and implement a **policy** addressing human rights and committing the business to respect human rights

### Human Rights Due Diligence

- Assess actual or potential human rights impacts
- Integrate the findings and take action to prevent or mitigate potential impacts
- Track performance
- Communicate performance to stakeholders

### Remediation

Establish or cooperate in legitimate processes to provide or enable **remedy** to individuals harmed, if the company has caused or contributed to a negative impact

## Policy Commitment

As the basis for embedding the responsibility to respect human rights, companies should adopt a policy commitment, as set out in UN Guiding Principle 16. The policy should be approved by the board or equivalent in order to be embedded from the top of the company through all of its functions. It can be a stand-alone statement or integrated into a broader company policy or code of conduct. The policy should give meaningful guidance to those within the company and those linked to the company (e.g. through a business relationship).

At minimum, the policy should comprise an explicit commitment to respect all international human rights standards, including the [Universal Declaration of Human Rights](#) and the International Labour Organization's [Declaration on Fundamental Principles and Rights at Work](#).

The commitment should:

- be approved at the most senior level of the business;
- be approved by individuals with relevant internal and/or external expertise;
- stipulate the company's human rights expectations of staff, business partners and other parties directly linked to its operations, products or services;
- trigger the development of internal procedures and systems necessary to meet the commitment in practice;
- be publicly available and communicated internally and externally to all staff, business partners and other relevant parties; and
- be reflected in operational policies and procedures necessary to embed it throughout the business.

The integration of human rights policies throughout a business is paramount in order for a company to respect human rights. Leadership from the top is essential to ensure that findings are addressed at the appropriate levels of the organisation, and human rights training is important to ensure that employees know how to respond appropriately when unforeseen situations arise.

### Key considerations:

- A policy may include a commitment to respect salient human rights issues (defined below).
- A policy may address specific individuals or groups who may be impacted by a company's activities or through its business relationships, or groups to which the company pays heightened attention.
- In disseminating the commitment to the public, a company should bear in mind:

- o Whether the commitment is widely accessible, especially to its key stakeholders;
- o Whether and how the commitment is communicated to entities with which the business has a relationship (e.g. business partners, suppliers, organisations in the value chain); and
- o Whether and how the commitment is communicated to employees and other individuals employed by the company.

## Human Rights Due Diligence

Human rights due diligence allows a company to take proactive, preventative action to address their human rights risks and to know and show that they respect human rights in practice. The process outlined in UN Guiding Principle 17 and explored in detail in UN Guiding Principles 18-21 involves:

- assessing actual and potential human rights impacts;
- integrating and acting upon the findings;
- tracking responses; and
- communicating internally and externally as to how impacts are addressed.

The due diligence process should consider all internationally recognised human rights with a priority to identify and address the salient issues for the company. Due diligence should be an ongoing process, recognising that human rights risks may change over time as the business' operations and operating context evolve. The process should be initiated as early as possible when commencing a new activity and/or establishing a new business relationship. A due diligence process should also be undertaken even if the business activity or relationship takes place in States that are unwilling or unable to meet their duty to protect the human rights of their citizens (under Pillar I), and applies even when a company engages in other activities in support of human rights, such as philanthropy. That is, a company cannot offset its responsibility to respect human rights by engaging in efforts to promote human rights.

Human rights due diligence varies in complexity according to the size of the business, the risk of severe human rights impacts, and the nature and operating context of its operations.

Companies with especially large value chains, which may have a difficult time conducting due diligence on all adverse human rights impacts in their operations and value chain, should prioritise their **salient** human rights risks. Salient human rights risks are those whose potential



negative impacts would be the most severe based on the below criteria.

- **Most severe** in terms of their scale, scope and remediability
  - *Scale*: gravity of the impact on human rights; and/or
  - *Scope*: the number of individuals that are or could be affected; and/or
  - *Remediability*: ability to restore the right affected (to the same level as it was before the impact).
- **Potential**: impacts that have some likelihood of taking place in the future
- **Negative impacts on human rights**: with a focus on risks to people's rights, rather than risks to the business.

While salient human rights risks typically vary across sector and operating context, at this level of severity, they can be expected to be closely linked to risks posed to the business. See diagram below.



To identify salient human rights issues,<sup>20</sup> the company should:

- identify all human rights which may be negatively impacted across its operations, value chains and other business relationships. This process should involve relevant functions and units within the company and be informed by the perspectives of those who may be negatively impacted;
- Identify and prioritise those potential negative impacts that would be the most severe (see definition above);

- If required, further prioritise negative impacts based on their likelihood of occurring but recognising that some may be high-severity but low in their likelihood of impact; and
- Explain its conclusions to stakeholders (internal and external) to ensure other considerations have not been overlooked.

The key steps of human rights due diligence, illustrated by the diagram, are described below.



<sup>20</sup> See UN Guiding Principles Reporting Framework Key Concepts: <http://www.ungpreporting.org/key-concepts/salient-human-rights-issues/>

## A. Identifying and assessing risks and impacts

As an initial step, companies should proactively investigate the impacts on people that they may cause or contribute to through their own activities, or which may be directly linked to their operations, products or services by their business relationships.

Identifying and assessing human rights impacts can be linked with other processes such as risk assessments or environmental and social impact assessments. However, these processes sometimes assess risk from the perspective of risk to the company; human rights due diligence instead assesses and prioritises risks from the perspective of the **people or peoples experiencing the adverse impact, i.e. the rights-holders**. When assessing human rights impacts, all internationally recognised human rights should be considered, as a company may potentially impact any of these rights.

Human rights impact assessments can take many forms. For example, they can be sector-wide impact assessments, or stand-alone impact assessments, such as company-led, community-led, issue-based, or product-based. While there is no one way to conduct a human rights impact assessment, at minimum, the impact assessment should:

- Be informed by internal and/or independent external human rights experts; and
- Involve meaningful consultation with potentially affected stakeholders, as appropriate to the size of the business and the nature and context of its operations. When engaging in dialogue with communities, it is important to consider:
  - o appropriate languages;
  - o potential barriers to effective engagement;
  - o how to engage groups that may be at a heightened risk of vulnerability or marginalisation; and
  - o the different risks that may be faced by men and women.

Sometimes direct consultation with potentially affected stakeholders may be impossible; in these circumstances a second-best alternative is to consult independent experts, such as human rights defenders

and civil society organisations that understand the context well.

Company functions can play a key role in helping to identify and assess risks and impacts. For example:

- *CSR/Sustainability Department*: Provide human rights expertise; collaborate with operations; spearhead human rights impact assessment activity.
- *Legal*: Evaluate risks and provide input on challenges in operating in different country contexts.
- *Risk Management*: Provide input to (and possibly lead) human rights risk mapping; integrate human rights into main risk management process.
- *Stakeholder/Community Relations*: Interact with external stakeholders when an impact assessment involves consultations with neighbours, communities, and others.
- *Functions/Operations Particularly Exposed to Human Rights*: Involve in evaluating risks and prioritising actions (e.g. security, supply chain management, and human resource management).

## B. Integration: Acting on the findings from impact assessments

Once a company has identified potential or actual human rights impacts, it is essential that the findings are integrated across the relevant functions and processes in the company. In order to effectively integrate findings, responsibility for addressing actual or potential adverse impacts should be assigned to the appropriate level and function within the business. In addition, internal decision-making processes, budget allocations and oversight processes should enable effective responses to such impacts.

Taking action on the findings of the impact assessment depends on whether the impacts are potential or actual (i.e. they have already occurred). Potential human rights impacts should be prevented or mitigated by integrating these findings across the entire business' operations. Actual human rights impacts should be remediated (discussed later in this chapter).

How a business should act also depends on the relationship of the business to the impact, as stated under UN Guiding Principle 19. That is, a business can cause, contribute to, or be directly linked to a human rights impact through its business relationships.

- If a company has **caused or may cause** a negative human rights impact, it should cease and remediate the impact or prevent the impact.
- If a company has **contributed or may contribute** to a negative human rights impact, it should cease and remediate the impact or prevent the impact. It should also use leverage over other contributors to mitigate the impact as much as possible.
- If the negative human rights impact is **directly linked** to a company's operations, products or services by a business relationship, appropriate action depends on whether leverage over the entity could be exercised, the severity of the abuse and the importance of the relationship.

A company is considered to have leverage over an entity involved in a human rights impact if it has the ability to effect change in the entity's practices. A company could increase leverage by offering capacity building, incentives to cease the impacts, an opportunity to take an alternative course, or collaborating with other actors, to harness collective leverage.

If leverage can be exercised over the entity, then the company should use its leverage to mitigate any remaining negative impacts. If leverage cannot be exercised over the entity, then the company should determine whether it can sufficiently increase its leverage over the entity.

- If the company *can* increase its leverage, then it should use its leverage to mitigate the impact as much as possible.
- If the company *cannot* sufficiently increase its leverage, then it should determine if the relationship with the entity is crucial to its business.
  - o If the entity *is not crucial* to the company, then the company should consider terminating the relationship, taking into account potential adverse human rights impacts of this decision.
  - o If the entity is *crucial* to the company, the company should consider the severity of the impact. The more severe the impact, the more important it is to quickly see change in the entity before deciding whether to terminate the relationship.

- o If the company continues to remain in a relationship with the entity, then the company should consider if ongoing efforts will be made to mitigate negative impacts and if the company is prepared to accept any financial, reputation or legal implications as a result of continuing to engage with the entity.

In some situations, it will be relatively straightforward to prevent or mitigate the adverse impact. But other situations may be complex, with no easy or straightforward solution. When a situation is complex, it is often necessary to involve senior management in reaching decisions on the appropriate action to take, with involvement of all internal experts on the topic. In many cases, obtaining external expert advice may also be helpful.

### C. Tracking performance

Monitoring and auditing processes permit a business to track ongoing developments and are essential for the company to know and show that it is, in fact, respecting human rights. In practice, the methods of tracking may vary across sectors and even among business departments, but regular review of human rights impacts and the effectiveness of the responses to those impacts are crucial. Tracking should be based on appropriate qualitative and quantitative indicators and should draw on feedback from both internal and external sources, including affected stakeholders. Businesses should particularly aim to track the effectiveness of their responses to impacts on vulnerable or marginalised groups. Operational-level grievance mechanisms can also provide an important source of information, as can complaint mechanisms for employees and confidential means to report non-compliance such as hotlines.

The tracking system should be appropriate to the business and its impacts. For small companies with limited impacts, a telephone number and email address to report non-compliance may be sufficient. Larger companies with potentially significant human rights impacts, however, will need more extensive reporting and tracking systems.

### D. Communicating/reporting on risks and responses

Communicating on human rights performance shows transparency and accountability and is also vital to showing that a business respects human rights in practice. How often and in what way a business

should communicate on human rights risks may vary. It may involve formal public reports, or informal communications such as in-person meetings, online dialogues or stakeholder consultations.

Companies whose particular sectors or operating contexts pose risks of severe human rights impacts should report formally on how the company addresses such risks and provide regular updates on their performance. These communications should:

- be in a form and frequency that reflects the company's human rights impacts and that is accessible to its intended stakeholders;
- provide enough information to enable stakeholders to evaluate the adequacy of the company's response to the particular human rights impact involved; and
- not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

It is key that companies report on what is *important* to measure and not what can be measured. In addition, companies should not focus on monitoring and auditing at the expense of capacity-building and remediation.

#### **E. Remediation**

A business does not meet its responsibility to respect human rights if it identifies that it has caused or contributed to an adverse human rights impact and then fails to enable its remediation. The company can find out that it has caused or contributed to an adverse impact through its own human rights due diligence process, or the impact may be brought to its attention by other sources and confirmed by its own investigations. The business should provide for or cooperate in the impact's remediation through legitimate processes under UN Guiding Principle 22. Operational-level grievance mechanisms for those potentially impacted by the company's activities is one way of enabling remediation, provided the mechanism complies with the effectiveness criteria outlined in UN Guiding Principle 31.

Note that where a company has not caused or contributed to the impact, but instead is "directly linked" to a company's operations, products or services by a business relationship, the company is not required to provide remediation itself, although it may take a role in doing so.



A photograph of a man wearing a blue baseball cap with the number '28' and the word 'PORT' on it, and a light blue shirt. He is looking down at a brick wall he is working on. The background shows a building with a balcony decorated with green and white striped fabric. A large blue diagonal shape is overlaid on the left side of the image, containing the chapter title.

CHAPTER 3:

# THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)





# ARTICLE 1: RIGHT OF SELF-DETERMINATION

## Related rights:

ICCPR article 25 (Right to participate in public life)

ICCPR article 27 (Rights of minorities)

ICESCR article 1 (Right of self-determination)

This right allows peoples to determine their political status and their place in the international community. It includes the right of peoples to develop and progress in social, economic and cultural terms, to dispose of their land's natural resources and wealth, and not to be deprived of their own means of subsistence. The right to self-determination is concerned with freedom from domination by a foreign ('alien') power. It is a collective or group right held by 'peoples', often understood as peoples under colonial or comparable rule. The right of self-determination of indigenous peoples has also been recognised by the international community. As a right enjoyed by a group, it differs from most other human rights, which are framed as rights of the individual.

While in some cases the right of self-determination may lead to claims by peoples to independence from a State, self-determination also covers principles such as the rights of peoples to choose their political status within a State, and to have a meaningful role in the political process.

The aspects of the right of self-determination that have particular relevance to companies are the rights to pursue economic, social and cultural development and to dispose of a land's natural wealth and resources. A company's activities may impact negatively on the right if, for example, it is allowed to build a facility on land that has traditional significance to the peoples that inhabit the area. Likewise, if a company is given a licence to extract natural resources from the land by a government without consultation with the people who inhabit the land, the company may find itself affecting the inhabitants' right to dispose of their natural wealth and resources or their means of subsistence. By contrast, a company may facilitate enjoyment of the right when it consults with the people concerned, obtains their consent, and takes into account their perspective.

More information on article 1 can be found in the UN Human Rights Committee's [General Comment 12](#) (1984).<sup>21</sup>

<sup>21</sup> See also [UN General Assembly Resolution 2625 \(XXV\)](#) of 24 October 1970, and [General Recommendation 21](#) (1996) from the UN Committee on the Elimination of all Forms of Racial Discrimination.

## Case studies

### Energy and mining sector Australia

Energy Resources of Australia (ERA), a subsidiary of British-Australian transnational mining corporation Rio Tinto, has operated a uranium mine in the Northern Territory of Australia for over 30 years. The Ranger mine is situated in the middle of Kakadu National Park, but is deliberately excluded from the protected national park.

The mine is located in the Alligator Rivers region of the Northern Territory, which is also Aboriginal land. As such, the Aboriginal people receive royalties on sales of uranium from the mine. ERA has policies in place to ensure its contribution to environmental sustainability and aims to be “trusted by Traditional Owners, the community and its people.” It sets out to respect the culture and the objectives of indigenous people in the community.

In December 2013, a tank on the site cracked open and radioactive material leaked into the surrounding area. The Environment Centre of the Northern Territory, a local NGO, estimated that nearly one million litres of radioactive substance had leaked from the broken tank. The [leak was said to be](#) the third safety breach by ERA in a month.

The traditional owners of the area, the Mirarr, are represented by Gundjehmi Aboriginal Corporation (GAC). GAC claimed the nuclear incident to be [one of the worst in Australian history](#) and that the site’s facilities had to be audited.

In 2014, a [government appointed task force](#) concluded that no uranium leaked into the protected area of the

national park. It also concluded that the spill did not endanger human health or the surrounding environment of Kakadu National Park. In 2016, the Northern Territory Department of Mines and Energy announced that no charges would be brought against ERA with respect to the leak.

At the time, ERA had been seeking an extension of its mining permit in the area and in October 2015, the GAC confirmed that it opposed any extension of the mining permit, and noted that the extension was also not supported by the parent company, Rio Tinto.

ERA, accordingly, released a [statement](#) saying that it “respect[ed] the views of the Traditional Owners” and would review its business accordingly. This has been interpreted by some as an indication that ERA will cease to seek an extension. At an AGM in May 2016, ERA’s Chairman confirmed that ERA was instead preserving the option of possibly seeking an extension in the future.

The current mining concession ends in 2021, and ERA has access to the site for the purposes of rehabilitating the land to return it to its natural state post-mining, until 2026.

In December 2015, ERA indicated that its rehabilitation funds might fall short by AUD\$100 million. In [April 2016](#), GAC welcomed news that the parent company, Rio Tinto, would lend ERA AUD\$100 million to cover any shortfall.

## Mining sector Panama

Inmet Mining, acquired by First Quantum Minerals in 2013, is developing a copper mine in Panama. The project, called Cobre Panama, is one of the largest copper deposits in the world that has yet to be developed. It is located 120 kilometres west of Panama City, some 20 kilometres from the Caribbean Sea coast.

Indigenous groups live within the area of the mining concession. Early on in the development of the project, it was found that they would have to be resettled to nearby areas in order to be able to start production at the mine. In 2007, before First Quantum took over the project, community engagement began as residents were worried that resettlement could disrupt their way of life. Some were especially concerned, since they had already in the past suffered aggressive attempts by other companies to force them to leave.

As more than two thirds of the residents in the area are indigenous it was particularly important to respect their right to [free, prior and informed consent](#), and as such a resettlement plan for the project was established after important stakeholder consultations.

After having identified the need to relocate more than 600 residents, the company ensured that the resettlement process followed the highest international standards of transparency, while also respecting language barriers, cultural differences, gender issues, and generational, family and community variables.

While the Inmet process has received much praise, it may be noted that at least one community leader has a different perspective on the merits of that process, which were revealed in interviews in a [2013 study](#) on free, prior and informed consent.

The project was described in 2012 by Business for Social Responsibility (BSR), a sustainable business NGO, as a "[positive and innovative example of a company applying consent where national legislation does not exist](#)".

# ARTICLES 2 TO 5: OVERARCHING PRINCIPLES

Whereas articles 1 and 6 to 27 are substantive rights in the International Covenant on Civil and Political Rights (ICCPR) and are explained in some detail, together with their relevance to companies, articles 2 to 5 are overarching principles and are outlined below for the sake of completeness and to satisfy any curiosity on the part of the reader. As overarching principles, articles 2 to 5 cannot be applied individually but only in conjunction with a specific right in the ICCPR.

**Article 2** contains the general obligations for a State to respect and to ensure that all individuals within its territory and subject to its jurisdiction enjoy the rights recognised in the ICCPR without discrimination, and to provide an effective remedy for victims.

Non-discrimination is a fundamental and overarching principle of international human rights. Everyone is entitled to enjoy human rights irrespective of his or her colour, gender, religion, ethnic, social or national origin, political or other opinion, property, birth, or other status. The UN Human Rights Committee, which monitors and interprets the ICCPR, has further interpreted the principle of non-discrimination to include other grounds of discrimination such as age, nationality, disability and sexual orientation. Article 2(1) obliges States to prohibit any distinctions, exclusions, restrictions and limitations by both public authorities and private bodies on those grounds in the enjoyment of the rights set out in the ICCPR. This means that States have a responsibility to ensure that businesses carry out their activities and provide services in a non-discriminatory way. Reasonable and objective distinctions are permitted. For more discussion of the issue of discrimination, please see the commentary on article 26 of the ICCPR.

Article 2(3) guarantees the right to a remedy if one's rights under the Covenant are violated. Therefore, a remedy should be available to anyone whose rights have been abused due to the acts or omissions of a business enterprise.

The general legal obligations of States under article 2 of the ICCPR are discussed in detail in the UN Human Rights Committee's [General Comment 31](#) (2004).

**Article 3** requires States to ensure that all rights are enjoyed equally by men and women. States are allowed to adopt positive action to eliminate conditions that contribute to gender discrimination. See also [General Comment 28](#) (2000) for a detailed explanation of article 3.

**Article 4** covers the issue of 'derogation', that is the circumstances in which a State may suspend rights due to a public emergency, such as a war or a natural disaster. It also specifies certain non-derogable rights, such as the right to be free from torture, which must never be subjected to derogation regardless of any public emergency. See [General Comment 29](#) (2001) for a detailed explanation of article 4.

**Article 5** is known as a 'savings clause'. It specifies that the ICCPR will not be used by anybody (whether it be a government or another entity, such as a corporation) as a justification for engaging in an act aimed at destroying the rights of others. Nor can it be used as an excuse to lower domestic human rights standards.

# ARTICLE 6: RIGHT TO LIFE

## Related rights:

ICCPR article 7 (Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment)

ICCPR article 9 (Rights to liberty and security of person)

The right to life entails the right not to be deprived of life arbitrarily or unlawfully, and the right to have one's life protected. The right not to have one's life taken away by arbitrary killing is a fundamental right and includes a duty on governments to investigate such killings and punish offenders.

This right is of relevance to companies that employ, co-operate with, or benefit from protection by State security forces for their staff and installations.<sup>22</sup> The right is also of relevance to a company located in countries ruled by oppressive regimes if the company derives direct benefits from human rights violations by the State: both situations could lead to complicity on the part of the company in the State's violations of the right to life.

The right to life requires States to refrain from unlawful or arbitrary killing. It also requires positive actions to implement the right to life. It has been interpreted broadly to include the right of access to the basic necessities enabling survival (e.g. food, essential medicines) and provision of reasonable protection from threats to one's life. Such threats may arise outside the context of violence, arising for example in the context of work safety. Companies' actions may directly harm the right to have one's life protected if they adopt inadequate standards of occupational health and safety resulting in loss of life to workers or others. This duty extends beyond the workplace if products with lethal flaws are manufactured and sold.

Companies may also take actions that help promote the right to life. One example is using their distribution channels to disseminate information about how to avoid contracting HIV/AIDS or other infectious diseases. They can also produce and make accessible at low cost essential goods and services.

Allegations of complicity in violations of the right to life may arise if the products a company manufactures are misused by buyers in ways that the company could or should have foreseen, such as the use of pharmaceutical products in executions in breach of article 6. Companies that produce or supply weapons are also in a position to impinge on the right to life. Arms manufacturers should ensure that they do not deal in illegal weapons and that they comply with international arms embargoes.

More information on article 6 can be found in the UN Human Rights Committee's [General Comment 6](#) (1982) and [General Comment 14](#) on nuclear weapons and the right to life (1984). At the time of writing, the Human Rights Committee was drafting a new General Comment on article 6.

<sup>22</sup> These themes are addressed by the [Voluntary Principles on Security and Human Rights](#).

## Case studies

### Food sector Colombia

Chiquita Brands International, a US producer and distributor of bananas and other produce, has faced allegations of complicity in the killings of hundreds of people in Colombia.

The killings were executed by a Colombian paramilitary organisation, the United Self-Defence Forces of Colombia (AUC). In 2007, Chiquita acknowledged that a past subsidiary, Banadex, had made payments to the paramilitary group between 1997 and 2004. After the AUC was designated a foreign terrorist organisation by the US government in 2001, Chiquita disclosed the payments to the US Department of Justice. It acknowledged that the payments had been illegal and accepted a fine of US\$25 million.

The company nevertheless maintained that Banadex was forced to make the payments as “[protection money](#)” in response to threats from the Revolutionary Armed Forces of Colombia (FARC) to kill employees and destroy the plantations.

In 2007, family members of some of the murdered Colombians [sued](#) Chiquita, claiming that the company was complicit in the killings as it had paid the AUC money during the 1990s and early 2000s. They accused

Chiquita of abetting acts of terrorism, war crimes and crimes against humanity.

Numerous similar lawsuits were consolidated, ultimately concerning the deaths of over 4,000 Colombian nationals.

In 2014, the US court of appeals [ruled in favour of Chiquita](#) by dismissing the lawsuit on the grounds that it fell outside the jurisdiction of US courts. A Chiquita spokesperson stated that it had great sympathy for the Colombians who had suffered but that the responsibility for the killings belonged to the paramilitary groups.

Nevertheless, due to the range of claims asserted, parts of the case remain pending in a Florida federal court.

[In July 2015](#), a US appeals court ordered the US Securities and Exchange Commission (SEC) to release records relating to the payments to the AUC under freedom of information legislation to a pro-transparency organisation, the [National Security Archive](#). Chiquita had sought unsuccessfully to block that request, claiming the release would prejudice it in the Florida litigation.



## Private security sector

### Iraq

Academi, previously known as Blackwater and then Xe Services, is a security services training company that was founded in the United States in 1997. The company provides security services to the US government on a contractual basis and has participated in Central Intelligence Agency (CIA) activities.

On 16 September 2007, Blackwater security guards were involved in a shooting incident in which 17 Iraqis were killed, and over a dozen others injured, in Nisoor Square in Baghdad, Iraq.

A court case was filed in October 2007 in the US by a survivor of the attack, and family members of people who were killed in the attack. They accused Blackwater of permitting and encouraging “excessive and unnecessary use of deadly force”. The civil claims related to “extrajudicial killing”, “war crimes”, and “wrongful death”, amongst other claims.

Blackwater stated that the guards had responded to a threat against the convoy that it was protecting, and that all actions were lawful.

The 2007 lawsuit was consolidated with five others. Blackwater, by then known as Xe, settled the latter five suits in 2010. Academi, by then the successor company to Blackwater (and Xe), eventually settled the original 2007 suit for an undisclosed sum in 2012.

In 2008, US federal prosecutors filed charges against five Blackwater security guards with regard to the same incident. No charges were filed against the company itself. The charges were dismissed by a judge in 2009, but reinstated against four of the defendants by later appeal courts. Further charges were filed in 2013.

The four ex-Blackwater guards were [found guilty](#) by a jury of murder and manslaughter (and weapons charges) in October 2014. One defendant received a [life sentence, while the other three were sentenced to thirty years in prison](#).

The four convicted men [filed an appeal](#) against their convictions in February 2016.

## Pharmaceutical sector Europe

The injection of a lethal mix of pharmaceutical drugs is the main method of execution in States of the US which retain the death penalty. Lately, executions have had to be suspended in some of these States after several drug manufacturers have prohibited supply of lethal drugs for execution purposes.

In January 2011, Hospira Inc., a US-based pharmaceutical company, announced that it would stop producing sodium thiopental, an anaesthetic used to render inmates unconscious before the administration of other lethal drugs. Hospira had been the sole US producer of the drug.

Denmark's Unipension sold its entire holdings in the pharmaceutical company Lundbeck in May 2011 amid concerns that one of its products, the anaesthetic pentobarbital, was being used to carry out executions. Prisons conducting capital punishment had switched to pentobarbital after Hospira stopped manufacturing sodium thiopental. Unipension sold its shares after Lundbeck failed to provide detailed statements regarding its efforts to ensure that its products were not being used in undesired ways.

Lundbeck put [new distribution controls](#) in place in July 2011. The controls include a requirement from purchasers to provide written agreement that they will not redistribute the drug, and to deny orders from prisons located in States in the US that still have the death penalty.

Mylan, a Dutch manufacturer of rocuronium bromide, a drug that was a part of the state of Alabama's three-drug lethal injection, faced a backlash after information of the components of the injection became public in 2014. The company faced pressure to act as DJE Kapital, a German financial firm, pulled out of a US\$70 million investment in Mylan because it was not willing to guarantee that its products would not be used in executions.

The managing director of DJE Kapital commented at the time that the company could not risk having shares in companies that supply drugs used in lethal injections, because its clients would oppose such investments.

[Mylan](#) has since issued a statement saying that its product is not approved for use in lethal injections, and that it will cease sales to customers who fail to comply with its restrictions.

A non-profit organisation which advocates against the death penalty, [Relieve](#), reported in late 2015 that over a dozen manufacturers have now taken steps to prevent their products being used in lethal injections in the US. These manufacturers were joined in 2016 by pharmaceutical giant [Pfizer](#).



# ARTICLE 7: RIGHT NOT TO BE SUBJECTED TO TORTURE, CRUEL, INHUMAN AND/OR DEGRADING TREATMENT OR PUNISHMENT

## Related rights:

ICCPR article 6 (Right to life)

ICCPR article 9 (Rights to liberty and security of person)

ICCPR article 10 (Right of detained persons to humane treatment)

This right has a special status in international human rights law and is subject to no restrictions or provisos under any circumstances.<sup>23</sup> In addition to freedom from torture, cruel, inhuman or degrading treatment or punishment, this article also protects people from being subjected to medical or scientific experimentation without their consent. Torture is the most serious of the prohibited acts of ill treatment: it involves severe pain or suffering, physical or mental, that is intentionally inflicted for a particular purpose (e.g. extracting a confession). Cruel and inhuman treatment also entails severe suffering of the victim, though of a lesser scale than 'torture', while degrading treatment is characterised by extreme humiliation of the victim. Rape and acts of sexual violence fall within the purview of article 7.

The right to freedom from inhuman or degrading treatment may be relevant to companies if, for example, staff members are subjected to severe harassment or dangerous working conditions that cause serious

mental distress and anguish. Pharmaceutical companies and others engaging in medical or scientific research may impact on the right if medical or scientific experimentation is conducted without consent. Companies could potentially also face allegations of complicity in violations perpetrated by third parties if their products are misused to commit acts of torture. Companies may attract allegations of complicity in breaches of the right to freedom from torture through the actions of oppressive regimes with whom they have a business relationship. Such relationships might be joint commercial ventures or the engagement of State security forces to protect company installations.

More information on article 7 can be found in the UN Human Rights Committee's [General Comment 20](#) (1992).

<sup>23</sup> See also the [Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (1984).

## Case studies

### Manufacturing sector

#### Germany/Hungary

The migrant crisis in Europe resulted in more than a million refugee status claims in 2015, and many more in 2016.

In September 2015, two German companies which manufacture razor wire were approached by Hungary to provide wire for a fence along Hungary's border with Serbia and Croatia to keep migrants from entering the country.

The first company, Mutanox, refused to bid for the tender (reportedly worth around €500,000) due to concerns the wire would be 'misused'. The wire is designed to prevent break-ins and theft, but the [company objected to its use](#) in a context which might injure (or even kill) asylum seekers.

Razor wire can cause serious harm and lacerations, especially if a person, such as an asylum seeker, tries to cross it in a desperate situation.

The second company, which has remained anonymous, entered an unsuccessful bid but then [expressed regret](#): "In the end, we were glad not to have won", said the company's CEO.

It was later reported that the tender had been [filled by a Chinese company](#).

## Pharmaceutical sector

### Nigeria

Article 7 states, in its second sentence, that “no one shall be subjected without his free consent to medical and scientific experimentation”. Several companies and research bodies have faced media and legal scrutiny over consent processes used in clinical trials, irrespective of their medical success or failure.

Pfizer, one of the world’s largest pharmaceutical companies, faced long-running litigation in a number of jurisdictions over a clinical trial of an antibiotic drug called Trovan conducted in Kano, Nigeria. It was alleged that the trial led to a meningitis outbreak, and that Pfizer failed to comply with clinical trial regulations. Pfizer’s actions were said to have led to the deaths of 11 children, and caused serious injuries to many others. Pfizer denied the allegations.

In 2005, a US lawsuit was dismissed on jurisdictional grounds, but that decision was overturned on appeal in 2009. The US Court of Appeals based the latter decision in part on the finding that the prohibition of non-consensual medical experimentation on humans is binding under customary international law. [Pfizer settled that case](#) on confidential terms in 2011.

In May 2007, Kano and Nigerian federal authorities began criminal and civil proceedings against the company. In 2009, Pfizer reached a [US\\$75 million](#) settlement (of both civil and criminal proceedings) with the Kano authorities. A Nigerian [federal suit was also settled](#) on confidential terms.

The cases concerned the trial of Trovan, an antibiotic drug used on children suffering from meningitis at an infectious disease hospital. Approximately half of the children were administered Trovan and the rest given a comparator drug. It is alleged by children’s representatives that a meningitis outbreak followed the trial use of Trovan, although [Pfizer](#) has differing views on the facts. The former argued that Pfizer knew of risks, but failed to warn the children or their parents, did not alert them to the experimental nature of the treatment and their right to refuse it, or explain that alternative conventional medicines were available.

Pfizer emphatically denied the allegations and said that, before any child was administered the drug, the study’s purpose was explained to each parent or guardian and consent was obtained orally in their native language (due to high illiteracy rates). Pfizer said the “study was conducted with the full knowledge of the Nigerian government and in a responsible and ethical way consistent with the company’s abiding commitment to patient safety”.

Pfizer pledges adherence to international standards governing clinical trials and has internal policies in place to ensure voluntary informed consent. [Pfizer’s policy](#) is to work “with investigators ... local health authorities or community representatives ... to ensure the appropriateness of the informed consent process”.

## Mining sector Guatemala

In 2008, Hudbay Minerals (Hudbay), a Canadian mining company, bought a Guatemalan mining company and its Fenix mine, the biggest nickel mine in Central America. Hudbay sold Fenix and discontinued its Guatemalan operations in August 2011.

A few months earlier, in March 2011, eleven Guatemalan women sued Hudbay and its subsidiary HMI Nickel in an Ontario court. They stated that they were victims of gang rape perpetrated by security personnel contracted to Hudbay and HMI Nickel. The women said that the gang rapes took place in early 2007 when the Mayan Q'eqchi' community was forcibly evicted from El Estor.

Hudbay responded that the allegations concerned events that took place before Hudbay bought the Fenix mine. It also stated that the legal action was the first time it, or its subsidiary, had been informed of the rape allegations. The company confirmed that a legal eviction was executed on the date in question. It added that the evictions had been nonviolent and conducted by unarmed police, as required under Guatemalan law.

Hudbay initially argued that the case should be heard in Guatemala rather than Canada, but it withdrew that objection in February 2013. In July 2013, the Superior Court of Ontario [ruled](#) that this lawsuit and other associated legal actions could proceed in Ontario. (The associated lawsuits concern claims beyond the right to be free from torture).

Hudbay [denied](#) any responsibility for the alleged incidents and stated that it would defend itself vigorously against the lawsuits. Hudbay reaffirmed that it “takes its role as a corporate citizen seriously” and that it respects and protects human rights in all its operations.

On June 30, 2015, the Ontario Court of Justice [ordered](#) Hudbay to disclose internal information regarding its corporate structure and the degree to which it controlled its Guatemalan subsidiary. The court said that the information was relevant to decide whether Hudbay had been directly negligent, and/or whether its subsidiary had acted as Hudbay's agent.

The plaintiffs' lawyers [stated](#) that the 2015 ruling was the first time a Canadian company had been ordered to produce internal documentation in relation to a claim of human rights abuses in other countries.

Hudbay was also ordered to reveal details of security arrangements at its other mining operations, such as those in parts of Canada, so the court could determine if there exist any difference to the Guatemalan security arrangements, and whether any differences could be justified.

The lawsuit is ongoing as of June 2016.

## Banking sector China

In June 2016, a Chinese newspaper, The People's Daily, released a [video](#) which appeared to show the corporal punishment of eight employees at the Changzhi Zhangze Rural Commercial Bank in northern China. In the video, the eight employees are on stage before their peers. They are repeatedly spanked with a thick wooden stick by a trainer at a special training session.

It was reported that the trainer was [punishing](#) the eight employees for receiving the lowest scores in a particular training exercise. The spanking is preceded by the trainees explaining their poor performance with degrading self admonitions, such as "I am not brave enough". The corporal punishment was reportedly followed by "hair cutting" punishments, in which the women had their hair cut and the men had their heads shaved.

The bank halted the training session and the trainer has since apologised, explaining that he was implementing a training model that he had used for years.

It has since been reported that the bank has [suspended a number of executives](#), including its president, for failing to adequately investigate the training program. Compensation is also being discussed. The incident is also being investigated by the Shanxi Rural Credit Co-operatives Union.

Corporal punishment is a breach of article 7 of the ICCPR, entailing cruel, inhuman or degrading treatment. Ritual humiliation, such as the involuntary cutting of hair and the forced humiliating public admissions, also breach the provision.



# ARTICLE 8: RIGHT NOT TO BE SUBJECTED TO SLAVERY, SERVITUDE OR FORCED LABOUR

## Related rights:

ICESCR article 7 (Right to enjoy just and favourable conditions of work)

Slavery occurs when one human being effectively owns another. The right to freedom from servitude covers other forms of dominance, egregious economic or sexual exploitation, and degradation of human beings, which might arise for example in the context of the trafficking of persons, serfdom and debt bondage. Given the extreme nature of these human rights abuses, the rights to freedom from slavery and servitude are subject to no restrictions.

Forced or compulsory labour is also prohibited, and is defined by the International Labour Organization (ILO) as “all work or service which is exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily”.<sup>24</sup> It seems likely that the definition in article 8 will accord with that of the ILO. The fact that the person is paid for their labour does not mean that the labour is not forced if the other elements of forced labour are met. Unlike the freedoms from slavery and servitude, the right to freedom from forced labour can be restricted in certain circumstances such as national emergencies. Under article 8(3)(c), civic obligations such as fire-fighting and special obligations in some circumstances on doctors to provide medical aid, are not classified as ‘forced labour’.<sup>25</sup>

Forms of bonded labour are found all over the world. Examples might include a person in debt being forced to work without pay to pay off that debt, or where a migrant worker lodges his or her identity papers with an employer and is forced to work to reclaim the documents.

Prison labour is permitted in certain circumstances under article 8; however, it should be noted that ILO rules prohibit the use by private companies of involuntary prison labour.

Companies risk allegations of abusing these rights if they directly make use of slaves, forced, bonded or involuntary prison labour. Companies may also risk allegations of complicity if they benefit from the use of such labour by suppliers, subcontractors and other business partners.

Companies in the airline, shipping and other transportation industries, as well as those in the tourism sector, may come into contact with human trafficking where individuals are moved from one place to another for the purposes of forced or bonded labour, such as forced prostitution or domestic servitude.

When companies engage in collective action initiatives that help raise awareness about forced labour and human trafficking, they are promoting this right.

<sup>24</sup> ILO Convention 29, Forced Labour Convention (1930), article 2(1).

<sup>25</sup> See ILO Convention 29, Forced Labour Convention (1930), article 2(c).

## Case studies

### Garment sector

#### Jordan

The Institute for Global Labour and Human Rights (IGLHR), a non-profit human rights organisation, [reported](#) at the end of 2014 that a garment factory called Century Miracle in Jordan was failing to respect fundamental workers' rights.

IGLHR claimed that around 2,700 migrant workers were working at the Century Miracle factory, largely from China, Bangladesh, Burma, Sri Lanka and Vietnam. According to IGLHR, the workers had their passports confiscated. They were forced to work up to 16 hours per day seven days a week, totalling up to 110 hours each week. In addition, the average wage was only just above US\$0.53 per hour. The workers were housed in dorms without hot water or heaters, and allegedly infested with bed bugs. IGLHR reported that several major labels were using the factory as a supplier, including Ralph Lauren, Kohl's, JC Penney's and Eddie Bauer.

On February 9, 2015, [Century Miracle commented on the allegations](#) made by IGLHR. It stated that the report had not correctly described the situation at the factory. For example, it denied retaining workers' passports and explained that passports were only ever taken for administrative reasons.

Regarding the wages, Century Miracle said that the basic wage was in fact US\$0.69 an hour, higher than the Jordanian minimum wage. Lastly, the company said that it was conducting pest control in the dorms on a regular basis. It said that a heating system was provided for all dorms in winter time, and hot water year-round.

In March 2015, IGLHR produced an updated [report](#) concerning the Century Miracle factory. It claimed that its earlier report had prompted the return of passports, of which 90 per cent had been held by management prior to that report. IGLHR claimed that work hours at the factory were shortened after its first report. It stated that since its report, a normal shift averaged 13 hours instead of 16 hours, and wages were paid on time, including overtime. However, IGLHR noted that there had been no wage increases for years. Furthermore, IGLHR reported that all workers received Friday off work from the beginning of 2015. Regarding the housing situation, IGLHR reported that around 75 per cent of the workers had access to hot water. The bed bug problem was in its view being addressed, but was not fully solved.



## Retail sector Australia

In 2015, 7-Eleven, a chain of retail convenience stores, faced allegations concerning exploitation of its workers in Australia. The convenience store chain was accused of paying its workers below the minimum wage. The franchise's own figures suggested that around two-thirds of the chain stores were not paying their workers the statutory requirement.

According to media reports, the wage fraud often targeted foreign students and other visa holders. One student claimed he worked up to 16 hour shifts without breaks, and was still paid less than half of the required wage. The long hours meant he breached his visa conditions as an overseas student. The store owner had threatened to go to the authorities if he complained about the poor working conditions and his low salary, which might have led to cancellation of his student visa.

Internal documents revealed that 7-Eleven's head office had found that more than one in four stores had payroll issues. According to reports, the illegal activity by franchise owners also included the withholding of drivers' licenses and passports of staff.

The head office of 7-Eleven stated that it expected all franchisees to fulfil their legal obligations and that if one store was failing it would be "one too many". The chairman of the company vowed to "make good" any underpayments to staff. The CEO at the time of the original allegations resigned in the wake of the scandal in October 2015.

An [Independent Franchisee Review and Staff Claims Panel](#) was set up to investigate the claims related to underpayment. A hotline service was set up to receive claims. By the end of March 2016, almost AUD\$10 million in compensation had reportedly been paid to workers.

However, in that same month, 7-Eleven's new CEO admitted that it was still speaking with workers, and that the problems within the company were "deep-seated".

In April 2016, Australia's Fair Work Ombudsman [released a report](#) on the drivers of 7-Eleven's systemic non-compliance with workplace laws. Amongst its findings were that there was a "wholesale disregard for minimum wages in some stores". The Fair Work Ombudsman has commenced legal action against a number of individual 7-Eleven stores. 7-Eleven [responded](#) by accepting the report in full, and vowing to reform its practices.

In May 2016, reports emerged of tensions between 7-Eleven management and the independent panel, with the company worried about fraudulent claims. On 11 May, 7-Eleven transferred the panel's functions to a new "[independent unit within 7-Eleven](#)". Alan Fels, who had chaired the independent panel, stated that the panel had not agreed to the transition, and that the change in process was "done by self-interested people with the aim of minimising the payout". 7-Eleven's CEO responded that the change was undertaken to expedite claims.

In June 2016, the operator of one 7-eleven store was fined AUD\$400,000 for "rampant exploitation of its workers".

This illustrative example is also relevant to the freedom of movement in article 12 of the ICCPR, given the allegations of passports being withheld, restricting the ability of staff to leave the country.

In addition, article 7 of the ICESCR is of relevance given that the case study relates to conditions of work.



# ARTICLE 9: RIGHTS TO LIBERTY AND SECURITY OF PERSON

## Related rights:

ICCPR article 6 (Right to life)

ICCPR article 7 (Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment)

The rights to liberty and security of person prohibit unlawful or arbitrary arrest or detention of any kind. Arrest or detention is “lawful” if it is authorised under the law of a State. However, an instance of arrest or detention will contravene article 9 if it is “arbitrary”, even if it is “lawful” under a State’s domestic law. The “arbitrariness” of an instance of arrest or detention is determined by consideration of various factors, including its proportionality, reasonableness, appropriateness and predictability.

Article 9 applies to all places of detention, such as prisons, psychiatric institutions and immigration detention facilities. Corporations may attract allegations of complicity in government abuses of this article if they facilitate the arbitrary or unlawful detention of persons, as may be the case with companies which provide prison or other detention services.

This article also recognises the right to security of people, whether in or out of detention. Security of the person encompasses protection from physical or mental injury, regardless of whether the victim is detained or not. Companies can protect the security of the person when they offer security services and lend support to investigations into breaches of the right. Conversely, companies might negatively impact on enjoyment of the right if, for example, they threaten staff with violence or are complicit in instances of severe harassment by others, such as contracted security personnel or other employees.

More information on article can be found in the UN Human Rights Committee’s [General Comment 35](#) (2014).

## Case studies

### Jewellery sector

#### Australia

[Lassanah v State of New South Wales](#) was a case decided by the District Court of New South Wales in 2010. In the case, the owner of a Tag Heuer watch store in Sydney, was held responsible in a civil claim for false imprisonment brought by an intellectually disabled man, Mr. Oddie, and his social worker, Mr. Lassanah.

Mr. Lassanah and Mr. Oddie entered the store in search of a watch. The staff in the store erroneously believed that they looked suspicious and hit the alarm, causing the police to attend, detain, and search both men in a public place. During their questioning by the police, they were required to sit on the footpath in full public view, where they were accused of intended robbery. They were detained for about eight to nine minutes in total.

The court awarded compensatory damages to both plaintiffs for false imprisonment. The court found that

the police were acting on false accusations made by the staff in the store, which led to the unlawful detention of Mr. Oddie and Mr. Lassanah. The court concluded that as the store had caused the false imprisonment of both men, it was liable to pay for the harm incurred.

In its reasons, the court described the conduct of the staff as “mischievous” because it was “satisfied from the evidence that the [alarm] button was pressed well after the plaintiffs left the store, in circumstances where there was no threat, and where it is clear from the CCTV footage that nothing untoward had occurred.”

The shop owner offered an [apology in court](#) to both men. Even so, the court awarded Mr. Lassanah AUD\$30,000 and Mr. Oddie AUD\$40,000 in compensation for defamation and false imprisonment.

## Security management sector Australia

Broadspectrum, formerly known as Transfield Services, is a global provider of infrastructure and other services. It has a contract with the Australian government to manage offshore immigration processing centres on Nauru and Manus Island in Papua New Guinea.

In 2015, a civil society organisation called No Business in Abuse (NBIA), accused Transfield Services of violating human rights. NBIA focuses on corporations it considers to be complicit in human rights abuses within the immigration system in Australia. In [November 2015](#), NBIA published a comprehensive report, alleging Transfield Services' complicity in the abuse of the rights of detainees, including their rights to be free from arbitrary detention.

On several occasions, the [UN Human Rights Committee](#), which supervises the implementation of the ICCPR by States, has found that the mandatory detention of asylum seekers amounts to arbitrary detention of those asylum seekers, as it does not allow for the consideration of the individual circumstances of a prospective detainee, and whether there is any genuine need to detain them. Therefore, the Committee has found that mandatory detention of asylum seekers breaches article 9(1) of the ICCPR.

In its campaign, NBIA targeted the investors of Transfield Services, such as Australia's main banks, funds, and investors. In August 2015, HESTA, a major superannuation fund, divested its AUD\$23 million stake in Transfield Services, partly due to a "heightened risk of future litigation". Another stated reason was the following:

*"A number of independent non-government organisations have found that the mandatory, prolonged, indefinite, and non-reviewable nature of detention at asylum seeker processing centres breaches*

*the fundamental principles of international human rights law."*

In the same month, Transfield Services expressed its wish that its new contract with the Australian government (signed in October 2015) would allow it to invite investment fund managers to visit its facilities.

Transfield responded to the NBIA report in October 2015 by labelling it "[flawed](#)" and pointed out that the Nauruan government had changed its policy. The Nauruan government proposed to transition the detention centre so as to eventually allow asylum seekers to roam freely on the island. Transfield Services stated that it supported the policy, and looked forward to working with Nauru and Australia on developing a safe and secure open centre for asylum seekers. That program commenced in February 2016, though open access was initially limited to certain hours on three days of the week.

On 26 April 2016, the [Supreme Court of Papua New Guinea](#) ruled that the detention arrangements at Manus Island breached the country's constitutional provisions regarding liberty of the person. The Papua New Guinea government has consequently announced that the detention centre will be closed.

Transfield Services, by then called Broadspectrum, subsequently accepted a takeover offer from Spanish infrastructure company Ferrovial, which had acquired 59 per cent of the company by 30 April 2016. Ferrovial has announced that it [does not intend to run the detention centres in either Nauru or Manus](#).

In February 2016, NBIA had written a report to inform Ferrovial, in advance of Broadspectrum's acceptance of its takeover bid, of its possible exposure to human rights abuses if the takeover went ahead.

# ARTICLE 10: RIGHT OF DETAINED PERSONS TO HUMANE TREATMENT

## Related rights:

ICCPR article 7 (Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment)

The right of detained persons to humane treatment provides special protection for individuals who are deprived of their liberty, a group that is highly vulnerable to human rights abuses. Article 10 places duties upon detention authorities, such as prison authorities and psychiatric hospitals. These duties include: treating detainees with humanity and respect for the inherent dignity of the human person, separating convicted from remand prisoners, separating juveniles from other detainees, and providing a regime that facilitates the social rehabilitation of detainees. 'Humane treatment' includes the provision of a minimum of services to satisfy prisoners' basic needs such as adequate food, clothing, medical care and means of communication.

The activities of companies that operate detention facilities or provide prison management services are those most likely to impact on these rights.

More information on article 10 can be found in the UN Human Rights Committee's [General Comment 21](#) (1993).

## Case studies

### Correctional sector United States

The GEO Group, a prison company based in Florida, delivers correctional and detention management services to government agencies in a number of countries. In 2014 the company managed around one quarter of all detention beds within the US.

One of the institutions run by the company, from 2010 to 2012, was Walnut Grove Youth Correctional Facility in Mississippi. In 2012, it was reported housing inmates between the ages of 13 and 22.

In 2010, the Southern Poverty Law Center [filed suit](#) on behalf of teenagers housed at Walnut Grove, alleging that inmates were severely mistreated at the facility.

In 2012, the US Justice Department reported that inmate youth had been subjected to some of the worst sexual misconduct it had seen. The [report](#) found a series of severe problems such as management acting indifferently to sexual misconduct by staff members, use of excessive force, and staff being unconcerned about the risks and safety of juvenile prisoners.

A [settlement](#) was subsequently reached in the litigation in 2012, whereby it was agreed that all teenagers would be removed from the Walnut Grove facility and placed in state-run facilities in Mississippi.

GEO group ceased its operation of the Walnut Grove facility, as well as other correctional facilities in Mississippi, soon after the settlement. A spokesperson for GEO had stated that the human rights violations had arisen before it took over the Walnut Grove facility in 2010. A Justice Department spokesperson disputed that claim. The Mississippi Corrections Commissioner praised GEO's record with Walnut Grove in 2012, but later stated that a new operator might do a better job.

The GEO Group adopted a [Global Human Rights policy](#) in 2013, which refers to respect for the rule of law, and the rights of its staff and inmates.

Controversies of this type involving private prisons have sparked a movement to urge divestment of stock holdings from such companies. For example, the University of California was reported to have sold off US\$30 million of its holdings in private prisons, including GEO group, in December 2015.

This case study is also of relevance to article 7 of the ICCPR, the right to be free from torture, inhuman and degrading treatment, and children's rights under article 24 of the ICCPR.

# ARTICLE 11: RIGHT NOT TO BE SUBJECTED TO IMPRISONMENT FOR INABILITY TO FULFIL A CONTRACT

This right prohibits the imprisonment of people who are unable to pay a debt when the debt in question is a private obligation (rather than a public debt such as the obligation to pay tax), and arises when a person is incapable (as opposed to unwilling) of paying the debt or fulfilling the contract. This right is directed at the State, which must restrict the types of punishment that can be imposed for inability to fulfil private contractual promises.

The activities of companies are unlikely to impact directly on this right, but companies may need to respond in cases where employees or other stakeholders are affected.



# ARTICLE 12: RIGHT TO FREEDOM OF MOVEMENT

## Related rights:

ICESCR article 11 (Right to an adequate standard of living: right to housing)

This right has four parts. It allows people who are lawfully in a country to move freely throughout the country, to choose where to live within the country, and to leave the country if they wish to do so. These three parts of the right may be limited by restrictions on movement that are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others. The right to freedom of movement also gives people the right not to be arbitrarily prevented from entering their own country.

Companies' activities may impact on the right if, for example, a community has to be relocated because of company operations, which restricts the freedom of those people to choose where they live.

Development-related relocation is permissible only if absolutely necessary and so long as it is not conducted arbitrarily or in an unreasonable manner. To this end, freedom of movement must be recognised and considered as part of any discussions concerning relocation. Resettlement should be lawfully achieved after consultation with, notice and compensation for, and ideally consent from, those affected. Bonded labour, in situations where a worker's passport or travel documents are withheld, breaches the right to freedom of movement.

More information on article 12 can be found in the UN Human Rights Committee's [General Comment 27](#) (1999).

## Case studies

### Mining sector Peru

In 2015, a Chinese mining company, Chinalco, developed, a mining project called Toromocho, located in the District of Morococha, Yauli Province, in the Junin region of Peru. The mine holds one of the world's largest copper deposits. Due to its size, approximately 5,000 people from the nearby towns needed to be relocated.

Morococha has been a "mining town" since a 1930s mining boom. However, the poor regulation of mining had left the town in a hazardous condition. According to [a scholar](#) at a Peruvian university, the old mining town was built on toxic waste.

To encourage the residents from the old town of Morococha to agree on the resettlement plan, the new town was built with significant improvements compared to the 'run-down' old town.

Chinalco built schools, churches, health clinics and

playgrounds, and equipped every house with showers and toilets.

Residents would also be given title to their new homes, though the granting of such titles has been delayed.

Some reluctant residents demanded more from Chinalco in exchange for their resettlement. They wanted job security and better pay in their mining jobs to make up for what they considered a destruction of their hometown. Some raised concerns over the size of the new houses, arguing that they were too small.

After prolonged negotiations, most residents agreed to the relocation.

Chinalco has spent [over US\\$50 million](#) to relocate the residents and has involved the residents in the process in order to obtain a 'social licence' to operate in the area.

# ARTICLE 13: RIGHT OF ALIENS TO DUE PROCESS WHEN FACING EXPULSION

This article ensures that foreigners ('aliens') who are legally present in a country are not expelled from that country without due process in accordance with the law. It includes the right for an alien to be given the opportunity to present reasons why he or she should not be expelled and to have any expulsion decision reviewed. Due process (that is, fair procedures) regarding a deportation need not take place under article 13 if there are compelling needs of national security.<sup>26</sup>

Companies would rarely have a direct impact upon this right, though they could be complicit in a deportation executed by a government that breaches article 13. Where employees or other stakeholders are adversely affected, they may have a positive role to play in assisting those persons.

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<sup>26</sup> Due process is always required in certain removal cases, regardless of concerns for national security. For example, a State cannot deport a person to another State where there is a real risk that that person may be subjected to torture or ill-treatment (contrary to article 7 of the Covenant) upon return to a State. Therefore, when a credible claim of possible torture upon deportation arises, a State party must pay close scrutiny to the fairness of the procedure in determining the risk of torture before any removal is ordered.

## Case studies

### Aviation sector

#### United States

Jeppesen is a fully-owned subsidiary of the Boeing Company that works with air transportation services in providing navigational information.

In 2007, the American Civil Liberties Union filed a [lawsuit](#) on behalf of five plaintiffs against Jeppesen Dataplan, which is part of Jeppesen. The company was sued in a US federal court for its alleged involvement in the US government's "extraordinary rendition" program that has been in place since 2001. The program allegedly involved forcibly taking suspected terrorists to secret prisons in countries in an attempt to avoid national and international human rights laws in dealing with the suspect.

The five plaintiffs stated that they were victims of abductions, torture, and cruel, inhuman and degrading treatment within the extraordinary rendition program. According to the plaintiffs, Jeppesen assisted in constructing flight plans for the rendition flights. Furthermore, the company provided the CIA with flight services, logistics and schedules. The plaintiffs

stated that Jeppesen had full knowledge of the purpose of the extraordinary rendition flights.

The US government intervened in the case and called for it to be dismissed because it involved state secrets. It claimed that information regarding the case could not be disclosed without compromising national security. In 2008, a district court sided with the government and granted the motion to dismiss.

In 2009, a Court of Appeals decided to rehear the case. In 2010, the case was reheard and the Court of Appeals [dismissed](#) the case on grounds of national security by a majority of six to five judges.

The plaintiffs sought to revive the case by appealing to the US Supreme Court. In 2011, the US Supreme Court declined to hear the case, bringing an end to the litigation.

This case is also relevant to article 7 of the ICCPR, the right to be free from torture, inhuman and degrading treatment.

# ARTICLE 14: RIGHT TO A FAIR TRIAL

The right to a fair trial and equality before the courts is required in both criminal and civil proceedings to ensure the proper administration of justice. The rights include the entitlement to a public hearing before an impartial court or tribunal. Criminal proceedings demand extra guarantees for the accused such as the presumption of innocence, the right to examine witnesses on an equal basis with the prosecution, the right to an interpreter if the defendant does not understand the language used in the court, and the right to a review of conviction and sentence by a higher tribunal according to law.

It is rare that the activities of a company would have any direct impact upon this right. Companies could negatively impact on this right if they attempt to corrupt the judicial process, for example, by bribing judges or jurors, or destroying relevant evidence. Companies may facilitate the right by helping to provide legal representation to employees or other stakeholders who cannot otherwise afford it.

More information on article 14 can be found in the UN Human Rights Committee's [General Comment 32](#) (2007).



## Case studies

### Tobacco sector Australia

British American Tobacco (BAT) is one of the largest companies in the tobacco industry.

Rola McCabe, a smoker dying of lung cancer, in late 2001 brought an action against BAT in Victoria, Australia, arguing that it had been “negligent in its manufacturing and marketing of cigarettes”, which had caused her terminal disease. BAT intended to argue that there was no proven causal link between her disease and its products.

However, in April 2002 a judge of the [Supreme Court of Victoria](#) found that, prior to the filing of the case, the company, allegedly acting on legal advice, had systematically destroyed thousands of documents, including evidence about the chemical effects of nicotine, the health effects of smoking, marketing practices and other aspects of the tobacco industry. The judge ruled that the destruction of these documents hindered McCabe’s ability to establish her case, and thus denied her a fair trial. The case went before a jury on the issue of damages, and it awarded McCabe AUD\$700,000. McCabe died in October 2002 of lung cancer.

In December 2002, the [Victoria Court of Appeal](#) overturned the Supreme Court decision, ruling that there is no absolute obligation to save documents that might one day be relevant in litigation. It ordered that the McCabe estate repay the AUD\$700,000. It sent the case back to be heard in the lower court to be tried on the facts.

The Victorian Court of Appeal did, however, warn that litigants should not destroy documents that could be relevant to reasonably anticipated litigation with a view to perverting the course of justice. The Court also highlighted some North American cases where courts had supported the existence of a duty to preserve evidence that might reasonably be anticipated to be relevant in future litigation. The McCabe litigation continued, with her estate as the plaintiff, until it was settled confidentially in 2011.

The [effects](#) of the case have been significant, despite the settlement. The US Department of Justice used evidence from the case in a multi-billion dollar lawsuit against the tobacco industry.

In 2006, the state of Victoria enacted [legislation](#) clarifying the duty of a person to retain documents reasonably likely to be required as evidence in a legal proceeding, subject to a maximum penalty of five years of imprisonment. A second [2006 statute](#) gave the courts wide powers to draw inferences against a party to a legal proceeding where relevant documents have been destroyed, disposed of, or lost, if that document’s unavailability is likely to cause unfairness to another party in a legal proceeding.

## Correctional sector United States

In 2009, two judges of the Luzerne County Court of Common Pleas in Pennsylvania were indicted for allegedly accepting more than US\$2.8 million in incentives ('kickbacks') for sentencing many juvenile offenders to prison terms, even if such sentences were not justified.

The incentives were provided by [PA Child Care LLC](#), which owned two private juvenile detention facilities, in an arrangement designed to ensure the facilities were well populated (and hence well-funded).

The two judges pleaded guilty and were [convicted in 2011](#) of various fraud and corruption-related charges. One judge was sentenced to 28 years in prison; the other 17.5.

The hundreds of convictions affected by the incentives were [overturned](#) by the Pennsylvania Supreme Court shortly after the judges pleaded guilty. In addition to unjustifiably harsh sentencing, many of the cases were affected by the fact that the judges did not allow the children to consult a legal representative.

Two owners of the detention facilities also served time in prison (18 months and one year respectively). Both owners have settled consequent lawsuits for millions of dollars. Class actions, however, continue, including against the former judges.

The scandal has led to some [judicial and legislative reform](#) of juvenile justice in the state of Pennsylvania, including provisions regarding the strengthening of the rights of juvenile defendants to legal counsel.

# ARTICLE 15: RIGHT TO BE FREE FROM RETROACTIVE CRIMINAL LAW

The right to freedom from retroactive criminal law prohibits the State from imposing criminal penalties for an act done that was not illegal at the time it was committed. It also prevents States from imposing heavier penalties for crimes than those that were prescribed at the time the crime was committed. Furthermore, criminal laws must be reasonably clear

and precise, so that people are capable of knowing whether their conduct is criminal under the law or not.

It is unlikely that the activities of a company would have any direct impact upon this right, unless they somehow lobby for, or otherwise directly benefit from, or facilitate the enactment of such laws.

# ARTICLE 16: RIGHT TO RECOGNITION AS A PERSON BEFORE THE LAW

Article 16 guarantees that an individual be endowed with the capacity to be a person before the law. That is, a human being must be recognised as a person with 'legal personality'. Denial of a person's independent legal recognition is often a precursor to the denial of other fundamental human rights such as the rights to liberty and to life. Examples of breaches of this article are laws that treat married women as the property of

their husbands, children as the property of their parents, or the property of a married woman as the property of her husband.

It is unlikely that the activities of a company would have any direct impact upon this right, though they may be complicit in the abuse of this right by others.

# ARTICLE 17: RIGHT TO PRIVACY

This right protects people against arbitrary, unreasonable or unlawful interference with their privacy, family, home or correspondence, as well as unlawful attacks on their honour and reputation. Arbitrary restrictions on privacy are prohibited even if authorised under a State's domestic laws. Governments have duties to protect against arbitrary interferences with privacy by State agents or private bodies such as employers and the media.

The right to privacy is not absolute. Governments can, for example, authorise restrictions on privacy by measures that are necessary to protect a legitimate public interest, such as public order (e.g. search warrants to facilitate the detection of crime and apprehension of criminal suspects) or national security (for example, lawful surveillance of terrorist suspects).

Companies' activities may impact on the right to privacy. Privacy has become a particularly important issue in this electronic age in which large amounts of data are stored and more sophisticated methods of obtaining that data are being devised. Companies

are frequently involved in the large-scale gathering of personal data on customers, employees and other stakeholders, so there is a consequent need to ensure the confidentiality of such information.

Companies may impinge on the right to privacy or risk being complicit in other human rights violations, if, for example, IT or telecommunications firms were to unlawfully or arbitrarily hand over sensitive customer data to the government without consent.

The notion of privacy has been interpreted by the European Court of Human Rights to include freedom from unreasonable interference in the enjoyment of one's private space. For example, under this theory, a company's emission of gas fumes into a residential area could harm the privacy rights of residents in that area.<sup>27</sup>

More information on article 17 can be found in the UN Human Rights Committee's [General Comment 16](#) (1988).

<sup>27</sup> See *Lopez-Ostra v Spain* [1994] 20 EHRR 227.

# Case studies

## Information Technology sector

### Global

Google is the world's largest and most used search engine.

In 2011, the government of Spain ordered Google to delete certain information regarding dozens of Spanish citizens from its search indices. This action followed complaints to the Spanish Data Protection Agency from people whose names, when searched for on Google, produced results which they did not want to be part of their public profile (for example, stories about criminal convictions and financial troubles). Google contested the Spanish order.

Earlier that year, Google's Global Privacy Counsel had posted a [blog](#) entry in his personal capacity which was very critical of the idea of the so-called "right to be forgotten", stating that "more and more, privacy is being used to justify censorship".

In 2014 the [European Court of Justice](#) (ECJ) upheld Spain's deletion order, stating that European law gave citizens the right to have search results (links) removed if they were "inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of the time that has elapsed".

Google now [accepts](#) applications for information to be removed and considers these requests against the standard established by the court. It sees its role as "balanc[ing] the rights of the individual to control his or

her personal data with [the] public's right to know and distribute information." The company's decisions can be appealed to the applicant's local data protection agency.

The [New York Times Editorial Board](#) argued that the ECJ's ruling struck the wrong balance on freedom of speech versus privacy. It predicted a great 'purge' of millions of search results, which "would leave Europeans less well informed and make it harder for journalists and dissidents to have their voices heard." Two years after the ECJ ruling, Google had received nearly 450,000 requests and had granted 57 per cent of them.

In March 2016, after a request from the French data protection agency [CNIL](#) and discussions with other European privacy regulators, Google expanded its delisting of results to all Google search domains (rather than just European sites such as google.de and google.fr). Geolocation signals are now used to determine where the searcher is. Google stated: "We believe that this additional layer of delisting enables us to provide the enhanced protections that European regulators ask us for, while also upholding the rights of people in other countries to access lawfully published information."

This case study illustrates how a company may have to navigate the tensions which can exist between competing rights, in this instance the right to privacy and right to freedom of expression and to receive information (protected in article 19 of the ICCPR).



## News media sector United Kingdom

In 2007, Glenn Mulcaire, a private investigator, and Clive Goodman, the “royal editor” of News of the World, a British tabloid, were convicted of hacking into phone voicemails of a member of the Royal British Family.

The UK Press Complaints Commission (PCC) conducted an investigation into accusations of further phone hacking by News of the World. It released the report of its investigation in 2009, and found no evidence to support the allegations.

In July 2011 the Guardian reported that the phone of murder victim Milly Dowler had been hacked by News of the World when she disappeared in 2002. That revelation shocked the British public, and forced politicians and the press to pay more attention to allegations of systemic phone hacking and other invasions of privacy by tabloid newspapers. Only a few days later, the closure of News of the World, which had been in operation since 1843, was announced. Since that time, millions of pounds have been paid as compensation by a number of newspapers, including News of the World and the Mirror Group papers, to victims of phone hacking.

On 13 July 2011, the Leveson Inquiry was established by the government to investigate the culture, practices and ethics of the UK press. The relationship amongst the press, police, and politicians was also investigated. A wide range of witnesses gave evidence, including journalists, editors, celebrities, politicians, and the families of missing persons and murder victims. Many of the witnesses claimed to have suffered gross invasions of privacy and

other indignities, including defamation and attacks on their honour, at the hands of the press. For example, the parents of a missing toddler spoke of how the press had declared “open season” on them in the wake of their daughter’s disappearance. The News of the World was said to have published the mother’s personal diaries and exhibited no respect for her grief. Photographers were said to have camped and harassed the family outside their home, and banged on the windows, frightening their two other young children. The parents also endured the publication of a defamatory story in the Daily Express which claimed they had sold their missing daughter to pay off debts.

Lord Justice Leveson [reported](#) on the first part of his inquiry in late 2012. He found a number of serious problems in the culture and practices of a number of British press outlets. Leveson stated that the PCC had been an inadequate watchdog over the press. In late 2014, the PCC was replaced by the Independent Press Standards Organisation ([IPSO](#)). However, IPSO has faced criticism, including from the prominent activist group, [Hacked Off](#), which argues that IPSO fails to comply with Leveson’s recommendations.

A second part of the Leveson inquiry is intended to examine unlawful and improper conduct by the UK press, as well as police complicity in such conduct. It could not take place until a series of criminal proceedings and investigations involving journalists and editors at a number of press outlets concluded. As of June 2016, it is unclear if the second phase of the Leveson inquiry will proceed.



# ARTICLE 18: RIGHTS TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

The right to freedom of thought, conscience, and religion encompasses a person's freedom to choose, practise and observe his or her chosen religion or belief. The freedom also protects the right not to profess any religion or belief. Article 18 prohibits coercion that would impair the right to have or adopt a religion or belief, including the use of threats of physical force, or penal or civil sanctions to compel adherence to or recanting from particular beliefs. The right to manifest a religion or belief includes the right to worship, as well as to teach and observe religious rituals such as the wearing of particular clothes or headwear.

The right to manifest religious or other beliefs may be limited by law where it is necessary to protect public safety, order, health, morals, or the rights of other people. Imposition of such restrictions might occur if, for example, a religion advocated the use of dangerous drugs and was therefore considered to be a threat to public order and public health.

Breaches of this right often occur in the context of discrimination on religious grounds. However, the right can be breached in the absence of discrimination, such as in the hypothetical situation of a State that suppresses all manifestations of any religion.

Companies' activities are most likely to impact on this right with regard to their workforces. For example, companies may need to accommodate the religious practices of workers who are required to pray during work hours or who request time off in order to observe certain holy days. Issues may arise regarding the wearing of religious clothing, headwear or jewellery by employees. Companies need to balance the freedom to manifest one's religion with competing legitimate interests such as health and safety, the rights of other workers, and the legitimate needs of the business.

Companies may also encounter these issues if they operate in contexts where the rights to freedom of thought, conscience and religion are commonly violated and employees or other stakeholders are among the victimised. Companies can facilitate enjoyment of the right by promoting a culture of religious tolerance and understanding within their workplaces.

More information on article 18 can be found in the UN Human Rights Committee's [General Comment 22](#) (1993).

## Case studies

### Retail sector United States

Abercrombie & Fitch is a US retailer of casual wear. It has faced litigation in relation to its hiring policies, and its impacts on freedom of religion.

A young Muslim woman was allegedly denied employment with Abercrombie & Fitch, because she did not comply with its “look policy”. The woman claimed that it was the fact that she wore a religious headscarf to the interview that disqualified her for the job. The US Equal Employment Opportunity Commission (EEOC) filed suit on her behalf.

In 2015, the [US Supreme Court](#) ruled in favour of the EEOC, and stated that Abercrombie & Fitch could be liable under federal anti-discrimination law, sending the matter back to lower courts for final determination.

The Supreme Court judgement means that businesses must ensure that each employee and prospective employee’s religious beliefs are accommodated. Furthermore, a company must effectively train its management and staff to ensure that policies respecting freedom of religion are put in place and upheld.

Abercrombie & Fitch [stated](#) that it had replaced its “look policy” with a new dress code that allowed employers to express their individuality more freely. The company did, however, note that the Supreme Court ruling did not determine that the company had discriminated against the female interviewee.

In response to the decision, the National Law Review produced a [short guide](#) on how to accommodate religion in the workplace. The guide notes that companies should be prepared to reasonably accommodate the religion of any prospective or current employee if that does not impose an undue hardship on the relevant employer.

Examples of such accommodation include rearrangements of work schedules or the allowance of unpaid time off to accommodate the observance of religious practices, and exceptions to clothing codes. Companies are urged to be open minded in this respect.

**Retail sector**  
**United Kingdom**

Tesco, the British multinational retailer of groceries and general merchandise, lost a discrimination case against two Muslim employees in 2013.

A set of Muslim employees had lobbied the company for a prayer room in its distribution depot in Crick, Northamptonshire, since 2006. A security office was accordingly converted to an Islamic prayer room in 2008.

In 2012, [new restrictions](#) were allegedly put in place regarding the use of the room. These restrictions required Muslim employees to submit requests to their managers and enter their names and prayer times in a registry when they wished to pray.

The employees were only permitted to pray one at a time. The [Northamptonshire Rights and Equality Council](#) (NREC), which represented the claimants, stated that these rules governing prayer were used by the store's management to control, monitor and harass its Muslim workers.

In 2013, the [Bedford Employment Tribunal](#) found Tesco guilty of indirect discrimination on the basis of religion. The claimants' representative applauded the judgement as a victory for all religious people.

Tesco responded that it takes its "responsibilities as an equal opportunities employer very seriously".



# ARTICLE 19: RIGHTS TO FREEDOM OF OPINION AND EXPRESSION

## Related rights:

ICCPR article 20 (Rights to freedom from war propaganda, and freedom from incitement to racial, religious or national hatred)

ICCPR article 21 (Right to freedom of assembly)

ICCPR article 22 (Right to freedom of association)

ICCPR article 25 (Right to participate in public life)

Article 19 protects the right of each person to hold opinions free from outside interference. This right cannot be restricted in any circumstances. Article 19 also protects the right to freedom of expression, which is the right to seek, receive and impart ideas in whatever media or form. Forms of protected expression include written and spoken messages, and non-verbal expression such as images and artistic objects. Expression is protected under this right whether in print, audio-visual or electronic form. Expression can concern any topic, including political and non-political issues. Article 19 also embraces a right of access to information held by public bodies.

This right can be restricted by measures provided by law and necessary to protect the rights or reputations of others, or to protect national security, public order, public health or morals. All limitations on free expression must be proportionate to the ends sought in order to be permitted under article 19.

'Public order' refers to the rules of a country that ensure the peaceful and effective functioning of society. An example of a law which protects public order is one which imposes reasonable limits on the delivery of speeches that are very likely to provoke riots. 'National security' refers to a situation where the political independence of a country or the country's territory is threatened. For example, it will normally be permissible for a government to prohibit the publication of the names of its active intelligence agents. An example of a restriction on speech which protects 'public health' is a ban or restriction on the advertising of

tobacco products. An example of protection of 'public morals' is the television watershed imposed in certain countries that prevents sexually explicit programs from being aired until late in the evening. Undue exercise of free expression can also occasionally prejudice the rights of others, such as a person's right to privacy (e.g. in the case of the revelation of personal confidential information) or, in the case of contempt of court, another's right to a fair trial. Defamation and libel laws are common ways of protecting people's reputations, though they must not be too broad nor can they prescribe criminal penalties.

This right has particular significance for the media industry, including filmmakers and distributors, publishers, the television and music industries, and internet companies. Governments should ensure a diverse media by refraining from monopoly control, and by preventing undue media concentration or dominance by private media groups. Issues regarding freedom of expression also arise when governments put pressure on media or technology companies to censor their output or limit customers' access to information. Media companies themselves should ensure that they do not unduly restrict the freedom of expression of journalists. Furthermore, private internet providers should not block internet access except as provided by law, and in circumstances which are reasonable and proportionate.

More information on article 19 can be found in the UN Human Rights Committee's [General Comment 34](#) (2011).

## Case studies

### Social media sector

#### Global

Facebook is the world's biggest social media site and is based in the US.

Facebook has a policy which requires people on its site to use their authentic identities. Its policy page explains: "We require people to provide the [name] they use in real life so you always know who you're connecting with. This helps keep our community safe."

In mid-2010, Wael Ghonim, then a Google executive based in Dubai, set up a page on the Arabic version of Facebook entitled "We Are All Khaled Said", in protest against the [now former] Egyptian government of Hosni Mubarak. Said was a young man who had been tortured and killed by Egyptian police.

In November 2010, Facebook deactivated the account, and removed the page because Ghonim had established it under a pseudonym. The page was eventually [restored](#) after a US resident agreed to take on the nominal role of administrator.

Ghonim believed that use of a pseudonym was a prudent safety measure when posting politically charged material against the Mubarak government. US legislators, notably the Chair of the US Senate human rights subcommittee Richard Durbin, have lobbied Facebook to change its policy against anonymity to protect pro-democracy activists, but Facebook has refused to do so. The company claims the policy is necessary to avoid fraud and to ensure user accountability.

The 30-year rule of President Mubarak came to an end in February 2011, and social media is said to have contributed significantly to the pro-democracy movement which brought about this result. Many of those who protested in Tahrir Square in Cairo in January/February 2011 were said to have learned about the demonstrations on Facebook. In an acknowledgement of the importance of Ghonim's page, Facebook provided special [anti-hacking protection](#) for it during the protests.

Another example which illustrates how the rights to freedom of opinion and expression have been relevant to Facebook (together with Google and Twitter) stems from 2015 when it agreed to work with the German authorities to [censor hate speech](#) against refugees and Muslims. Hate speech is prohibited under article 20 of the ICCPR and companies and governments must also take this right into account regarding their freedom of expression policies.

A further example is from early 2016 when Facebook [removed](#) a post by an Australian Christian activist criticising marriage equality campaigners because it did not adhere to 'community standards.' The content was restored after intervention from the Australian Human Rights Commissioner, who expressed his support for the activist's freedom of expression.



## Internet search sector

### China

Google, a global internet company, began its operations in China in 2000. To make its services available in China, Google was required to block certain websites in accordance with the Chinese government's censorship laws. In 2006, the global human rights organisation Amnesty International urged Google, Microsoft and Yahoo! not to agree to the Chinese government's censorship terms.

After its launch, Google implemented specific search algorithms to ensure that it was complying with Chinese law. Certain search results that were considered vulgar or pornographic, as well as other results concerning politically sensitive issues such as the Tiananmen Square massacre of 1989, were removed.

After being the subject of an apparent cyber-attack in China in 2009, Google changed its strategy in relation to China in January 2010.

Google discontinued its censorship of search engine results and requested the Chinese government to allow it to operate in the country unfiltered. The Chinese government refused.

Two months later, Google's new policy led to the [closing](#) of Google China (google.cn) and redirection of all traffic to Google Hong Kong (google.com.hk) instead. Google subsequently lost market share in China to search engines operating from within the Chinese mainland.

In late 2015, Google was reported to be planning to re-enter the Chinese market by providing an 'app store' for its Android operation system for mobile phones, which dominates the Chinese smartphone market. Such a move may help to pave the way for the re-establishment of google.cn, though there are no signs that the search engine could run without compliance with Chinese censorship laws.

# ARTICLE 20: RIGHTS TO FREEDOM FROM WAR PROPAGANDA, AND FREEDOM FROM INCITEMENT TO RACIAL, RELIGIOUS OR NATIONAL HATRED

## Related rights:

ICCPR article 19 (Rights to freedom of opinion and expression)

This article requires the prohibition of war propaganda and the prohibition of any advocacy of national, racial or religious hatred that amounts to incitement to discrimination, hostility or violence. It carves out an area of speech that is not protected by the right to freedom of expression in article 19. The prohibition on war propaganda extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace that is illegal under the Charter of the United Nations. It is not prohibited to advocate for a war in self-defence, or for the exercise of a people's right of self-determination.

The second part of the article is directed against 'hate speech', which is speech that vilifies people and incites hatred against them on the basis of their race, religion or nationality. This aspect of the right is of particular significance to media companies and also telecommunications and internet companies that host chat-lines, websites, or other means of public communication through which hate speech might be aired. Companies that support or participate in campaigns to tackle racism and promote diversity help to facilitate enjoyment of this right.

More information on article 20 can be found in the UN Human Rights Committee's [General Comment 11](#) (1983).

## Case studies

### Construction materials sector Sri Lanka

LafargeHolcim is a multinational building materials supplier based in Switzerland. Holcim (Lanka) was a Sri Lankan subsidiary to the Swiss company before its sale in July 2016.

In 2015, a German human rights organisation called Society for Threatened Peoples (STP), alleged that Holcim (Lanka) was complicit in the propagation of military propaganda in Sri Lanka. STP claimed that Holcim had [sponsored](#) war museums and monuments by providing cement for construction. Holcim's contribution was acknowledged on plaques at the relevant museums and monuments.

These war memorials are controversial due to serious allegations against Sri Lanka of war crimes committed by the Sri Lankan military during the Sri Lankan civil war. In 2011, a [panel](#) appointed by United Nations Secretary-General Ban Ki-moon found "credible allegations" that war crimes and crimes against humanity had been committed

by the Sri Lankan military and the Tamil Tigers. A further report by the [Office of the UN High Commissioner for Human Rights](#) in 2015 urged Sri Lanka to set up a special court with international judges to prosecute war crimes.

Sri Lanka has undertaken steps to establish a domestic war crimes inquiry, but as of June 2016, no mechanism has been established.

In response to the report by STP, Holcim [stated](#) that it takes "issues of Sri Lanka as a post-conflict country into serious consideration" and that its goal has always been to improve the quality of life of local communities. Holcim also clarified that it was not aware that the cement it supplied would be used to build war memorials. It said that it would not have approved the use of the cement for that purpose, and that all signs associating the company with the war memorials had been removed.

## Sports sector Europe

The Union of European Football Associations (UEFA) is the umbrella organisation for all major national football associations in Europe. One of UEFA's objectives is to "promote football in a spirit of unity, solidarity, peace, understanding and fair play, without any discrimination". In recent years, UEFA has made the elimination of racism, intolerance and discrimination from the sport a priority.

Through its campaign called "[No to Racism](#)", UEFA is not only increasing awareness of discrimination and intolerance in football, but also developing methods of combating racism. UEFA affiliated clubs show support by spreading messages of anti-discrimination via their public address systems, as well as showing videos of high-profile players promoting the campaign.

To further its endeavours, UEFA works alongside the [Football Against Racism in Europe](#) (FARE) network. FARE aims to combat inequality within football and promote the social inclusion of marginalised and disenfranchised

groups. The organisation consists of 150 members in over 35 European countries. These members include amateur football clubs, grassroots groups, and NGOs.

In 2014, UEFA, FARE, and a players' union, FIFPro, organised a conference called "[Respect Diversity](#)" in Rome. The objective of the conference was to raise awareness about how to address racism in football.

Sporting contests have occasionally been sites of horrendous and high profile displays of racism between players, by fans against players, and between fans. Campaigns such as these from UEFA and other sporting organisations across the world can be important avenues for conveying a message of zero tolerance towards racist behaviour on and off the field. The popularity and influence of sport also helps to amplify the anti-racism message to a broad audience.

## News media sector Uganda

Rolling Stone was a newspaper in Kampala, Uganda (now defunct) and bore no affiliation with the famous US music magazine of the same name.

In October 2010, Rolling Stone published an article titled “Hang Them”, featuring photographs and names of more than 100 people identified as being homosexual. The headline was likely prompted by the then-current legislative proposals to introduce capital punishment for homosexual acts in Uganda.

The ramifications of this article for some of those individuals who were featured were severe. Some had to leave their homes because of violence, or fear of violence, from their neighbours or others in their communities.

Sexual Minority Uganda (SMUG) is a non-governmental organisation formed in 2004 to promote awareness and protect the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals in Uganda. Three of SMUG’s members filed a lawsuit against the newspaper after their photos and identities were disclosed in the “Hang Them” article.

These members sought a court order to prohibit the newspaper from continuing to publish photographs,

names and addresses of people that they identified as homosexual. The Managing Editor of Rolling Stone had defended the article by saying that the paper was properly exposing immorality.

In November 2010, a Ugandan court ordered a temporary injunction in favour of the plaintiffs, preventing Rolling Stone from publishing further lists identifying people as gay.

In December 2010, [the High Court of Uganda](#) ruled that the article violated the plaintiffs’ constitutional rights to privacy and safety, and ordered Rolling Stone to pay damages.

Tragically, four weeks after that court victory, one of the plaintiffs, [David Kato](#), was murdered in his home in Kampala. In the wake of the murder, the editor of Rolling Stone expressed no regrets about the “Hang Them” story.

On 25 February 2014, the Red Pepper, another newspaper in Uganda, published an article listing the names of 200 people identified as being homosexual. It was published one day after the passage of a Ugandan law increasing the number of offences related to homosexuality in the country.

# ARTICLE 21: RIGHT TO FREEDOM OF ASSEMBLY

## Related rights:

ICCPR article 19 (Rights to freedom of opinion and expression)

ICCPR article 22 (Right to freedom of association)

ICCPR article 25 (Right to participate in public life)

The right to assemble and gather together peacefully is protected by article 21, subject only to those restrictions that are imposed by law as necessary to protect the interests of national security, public safety, public order, public health or morals, or the protection of the rights and freedoms of others. “Assembly” in this context may refer to a gathering that takes place for a specific purpose, where there is public discussion, or where ideas are proclaimed. Freedom of assembly encompasses the right to demonstrate in groups, whether in stationary gatherings or marches.

States are in the most obvious position to violate the freedom of assembly. However, there have been cases where companies have been accused of complicity in government actions to quell demonstrations against company operations.



## Case studies

### Mining sector Guatemala

A Canadian mining company, Tahoe Resources, has operations in Guatemala where it runs the Escobal silver mine.

Tahoe Resources acquired the mine in 2010 and was still in the development stage when peaceful protests among residents in the nearby community started in 2013. The residents feared that the mine would have a negative impact on the local water supply. In April 2013, six protesters were injured after being shot by the company's security guards.

In a [statement](#) issued by Tahoe Resources in 2013, the company admitted that there had been both peaceful and violent protests after the company received its operating permit earlier in the year. It stated that after protesters armed with machetes turned hostile, the company's security forces used non-lethal tear gas and rubber bullets to protect themselves and their employees.

In 2014, residents of the nearby town of San Rafael sued Tahoe Resources in a Canadian court over the shootings. The plaintiffs [claimed](#) that Tahoe Resources ordered security personnel to suppress a peaceful protest organised by local residents by shooting at them. According to the plaintiffs, the company either authorised the shootings, or was complicit in the shootings by not preventing the violence.

In November 2015, the British Columbia Supreme Court [declined jurisdiction](#) in the case, and ruled that Guatemala was a more appropriate venue for the litigation.

[A criminal prosecution](#) has commenced in Guatemala against the security guard who allegedly ordered the shooting. As of May 2016, no civil proceedings have been filed against the company in Guatemala.

# ARTICLE 22: RIGHT TO FREEDOM OF ASSOCIATION

## Related rights:

ICCPR article 19 (Rights to freedom of opinion and expression)

ICCPR article 21 (Right to freedom of assembly)

ICCPR article 25 (Right to participate in public life)

ICESCR article 8 (Right to form trade unions and join a trade union and the right to strike)

Article 22 protects the right to form or join all types of associations such as political parties, religious societies, sporting and other recreational clubs, non-governmental organisations and trade unions. This right shall not be restricted, except by lawful regulation necessary to protect the interests of national security, public safety, public order, public health or morals, or the protection of the rights and freedoms of others.

Companies' activities are most likely to impact on the right insofar as it relates to trade unions and other employee representative bodies. Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) focuses on trade unions alone. For further details and additional case studies, see page 92.

Companies respect this right when they respect the right of workers to form trade unions or, when operating in countries where trade union activity is unlawful, they recognise legitimate employee associations with whom the company can enter into dialogue about workplace issues. Companies should also ensure that their activities do not undermine the right to join other legitimate organisations, such as political parties. Companies may also promote enjoyment of the right by speaking out in appropriate circumstances, publicly or privately, about laws that curtail the right.



## Case studies

### Beverages sector

#### Nigeria

La Casera Company is an Indian-owned corporation in Lagos, Nigeria, engaged in the manufacturing, marketing and distribution of soft drinks. Since it launched in 2000, it has become one of the main soft drink brands in the country.

On 11 September 2015, the National Union of Food, Beverage and Tobacco Employees (NUFBTE) filed a complaint against La Casera at the National Industrial Court (NIC), seeking an injunction to prevent the company from terminating employees.

On 14 September 2015, the company terminated the employment of over 1,300 workers. The union [claimed](#) the sackings arose because workers intended to join a

union, whereas [La Casera claimed](#) the terminations were caused by vandalism and threats from violent protesters.

On 15 September 2015, the [National Industrial Court](#) in Lagos issued an order against the company instructing it not to dismiss their staff and to suspend conflict with the NUFBTE until the legal process concluded. The court also nullified the notice of termination passed on to the workers. All parties were ordered to maintain the peace.

After union officials met with the management of La Casera in October 2015, all terminated workers were reinstated. The company resumed full scale operations, and stated that the [dispute had been resolved](#) with all parties satisfied in the outcome.

## Mining sector South Africa

Lonmin is a British/South African mining company, engaged in the production of platinum group metals. One of its South African mining sites is located in the northwestern part of the country in the Marikana region.

In 2011, Lonmin and the mine workers in Marikana were negotiating over wages. During the negotiations, workers were reportedly fired. Protests erupted, and the unrest continued even after agreements had been reached.

A separate protest in January 2012 resulted in four deaths and ongoing violence. Miners initiated a new protest in August 2012, seeking higher salaries as well as improvements to their housing facilities.

On 16 August 2012, the South African police opened fire at protesters in Marikana, leading to the deaths of 34 people and injuring over 70. Over 250 people were arrested. Several human rights organisations accused Lonmin of using ties with the government and the police force to stop the strike, leading to an escalation of violence.

The South African government established a judicial commission of inquiry in October 2012. [Its mandate was](#) to “investigate matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana ... which took place on about Saturday 11 August to Thursday 16 August, 2012”. The Commission was set up to analyse the liability of all actors, including Lonmin.

In June 2015, the Commission released a [report](#) concluding that Lonmin was not responsible for police action at the August 2012 protest. The report did, however, find that Lonmin had neglected its responsibility to use its best endeavours to resolve the labour dispute. The report also found that Lonmin had not responded appropriately to the threat and the outbreak of violence, and had failed to employ sufficient safeguards and measures to ensure the safety of its employees.

The Commission also made findings against other parties, including the trade union involved, individual strikers, and the police.

Lonmin released a [statement](#) acknowledging the report as a “vital step in the healing process” for the families of victims, and pledging full support to the Commission. It also pledged to fund the education of the children who had lost their parents, and pension and life fund payouts as required by statute.

In 2015, a [suit was filed by victims of the police shooting against Lonmin](#) in regard to the deaths at the mine in August 2012. Widows of the dead have also sought contributions to a compensation fund from BASF, a German chemical company that sources minerals from Lonmin.

This illustrative example is also relevant to article 8 of the ICESCR.

## Information technology sector

### Russia

Microsoft is one of the world's largest information technology companies.

In January 2010, it was reported that Russian police had entered the offices of a Russian non-governmental organisation (NGO), Baikal Wave, which had been organising anti-government demonstrations. According to the police, the raid had nothing to do with the NGO's campaigns. Rather, it was searching the organisation's computers for pirated Microsoft software.

According to an investigative report in the [New York Times](#), the tactic was commonly used by the Russian police to crack down on non-government organisations that opposed the government.

Following these allegations, Microsoft decided that it would have a third party conduct an independent investigation into the reports and use the advice for future changes in its policies.

Microsoft has since launched a “unilateral software license” for [NGOs](#) in over 30 countries, including Russia, to ensure that they have free, legal copies of Microsoft's products. Free licensing ensures that NGOs cannot be subjected to police raids on the basis of alleged software piracy. The General Counsel of Microsoft stated that while the company was aiming to reduce piracy and counterfeiting of its software, it aimed to do this “in a manner that respects fundamental human rights.”

These free software licenses are now managed via a [Microsoft portal](#). With this program, Microsoft is ensuring that its intellectual property rights are not used to suppress the freedom of political association under article 22 of the ICCPR.



# ARTICLE 23: RIGHTS OF PROTECTION OF THE FAMILY AND THE RIGHT TO MARRY

## Related rights:

ICCPR article 24 (Rights of protection for the child)

ICESCR article 7 (Right to enjoy just and favourable conditions of work)

ICESCR article 10 (Right to a family life)

The right to family life requires protection of the family by society and the State. The concept of a family varies throughout the world; each society's own definition of a family is generally applied. This includes the rights of men and women of marriageable age to marry and start a family, and for marriage to be entered into freely and with full consent. States must take appropriate steps to ensure that the rights and responsibilities of spouses during marriage and after any dissolution are equal.

This article is relevant to companies insofar as certain work practices may hinder or enhance the ability of people to adopt a healthy work/life balance and spend quality time with their families.

Further relevant case studies may be found at page 98 with regard to the similar right articulated in article 10 (the right to a family life) of the International Covenant on Economic Social and Cultural Rights (ICESCR).

More information on article 23 can be found in the UN Human Rights Committee's [General Comment 19](#) (1990).

## Case studies

### Information technology sector

#### United States

In a 2015 listing, the website [fatherly.com](http://fatherly.com) reviewed US companies' policies on paternity leave and created a list of the best companies for new dads. The listing revealed that the IT sector was the best industry for any new father wanting to spend time off work with his newborn child. The financial services sector was second best at having paternity leave programs in place.

The US was not amongst the 70 countries which, in 2015, guaranteed paid paternity leave. Companies have nevertheless created their own policies to respect a man's right to family life. However, according to reports, [only 15 per cent of companies in the US](#) offer paid leave to new fathers.

In the information technology sector the situation is somewhat different. Facebook guarantees four months

of parental leave to all new parents, regardless of gender, including same sex parents, wherever they may live.

Google guarantees 12 weeks of leave to the primary caregiver, regardless of gender. The birth mother receives 18 weeks of leave, and four more weeks if there were birth complications.

Streaming services company Netflix now offers 12 months of paid leave to salaried new parents. Microsoft and Adobe are also making important improvements to their paternity leave policies.

Studies show that paid parental (maternity and paternity) leave leads to improved productivity and profitability through reduced staff turnover and greater engagement.

## Airline sector

### Qatar

Qatar Airways is one of the premier airlines in the world and it employs more than 19,000 people.

In 2013, the [International Transport Workers Federation](#) (ITF) lobbied the International Civil Aviation Organization (ICAO) to take action against Qatar Airways on the grounds that it had not been respecting its female workers' right to marriage and right to family, among other human rights. It claimed that a standard employment contract included requirements of prior permission from the airline before a female worker could get married, and requirements of notification to the employer in case of pregnancy. Upon such notification, Qatar Airways was said to retain the right to terminate the contract.

In 2015, the [International Labour Organization](#) (ILO) found that Qatar had breached its ILO obligations by failing to prevent systemic sex discrimination by its state-owned airline, including in regard to the termination procedures in case of pregnancy. The ILO did acknowledge, however, that Qatar Airways had removed the clause requiring permission to marry from their employment contracts.

Qatar Airways has now [changed its policies](#) regarding marriage and pregnancies for its female workers. For example, pregnant workers are no longer dismissed, but are instead offered temporary ground staff positions until they are able to fly again.

# ARTICLE 24: RIGHTS OF PROTECTION FOR THE CHILD

## Related rights:

ICCPR article 23 (Rights of protection of the family and the right to marry)

ICESCR article 10 (Right to a family life)

Children are recognised by this article as being in need of special protection as required by their status as minors.<sup>28</sup> The duty to protect a child attaches to his or her family, community and the State. A child has the right to be registered and given a name immediately after being born, and the right to acquire a nationality. The age at which a child achieves majority and no longer requires the protections of article 24 is determined by governments in light of the relevant social and cultural conditions, so long as the age of majority is not unreasonably low or high.

Protection of the child includes protection from sexual and economic exploitation. A company (for example a hotel) may be considered complicit if it turns a blind eye to the sexual exploitation of minors within the vicinity of its business.<sup>29</sup> Furthermore, digital media businesses should ensure that they are not complicit in abuses of the rights of children, such as the dissemination and/or promotion of cyber-bullying, child sex tourism, child pornography, trafficking and cyber-grooming. Sexualised images of children should not be used in mass marketing.

Children are particularly susceptible to advertising and marketing. Therefore, companies should avoid the marketing of inappropriate and harmful products to children, such as cigarettes and alcohol.

Children may not be engaged to do work that is hazardous, arduous, or for which they are underpaid, or to work for the same number of hours as adults. Child labourers are frequently denied the opportunity to undertake education as a result of going to work, and their mental and physical health can suffer due to poor working conditions, long hours of work, and ill treatment by employers.

<sup>28</sup> The issue of children's rights is the subject of a specific treaty, the [UN Convention on the Rights of the Child](#) (1989). The Committee on the Rights of the Child has issued a [General Comment](#) on the impact of the business sector on children's rights.

<sup>29</sup> The protection of children from sexual exploitation is addressed in more detail by the [Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography](#) (2000).

The restriction on child labour under article 24 will likely be influenced by International Labour Organization (ILO) standards in this regard. ILO standards prohibit labour for those under the age of 15.<sup>30</sup> However, developing States may prescribe a minimum age of 14 and may even initially limit the scope of application of ILO standards if its economy and administrative facilities are insufficiently developed. It is acknowledged that the elimination of child labour is a difficult issue, as some families rely on the income from children to ensure their access to food and other necessities. Hazardous work, however, is prohibited by the ILO for all persons under 18.<sup>31</sup> There are some well-understood instances where children may work, such as when children assist families for short periods during farming harvests, or children over 15 working in non-hazardous conditions.

Companies respect the right when they observe the minimum ages for employment. However, the blanket dismissal of children can be problematic, as they may move into hazardous activities, such as prostitution or drug trafficking. Therefore, companies should promote the right in a variety of ways beyond the removal of child labourers from their value chain, including through helping to create educational opportunities for any such children, participating in collective action approaches to tackle child labour, and paying adult employees a living wage so that their children do not need to work.

More information on article 24 can be found in the UN Human Rights Committee's [General Comment 17](#) (1989).

<sup>30</sup> See [Minimum Age Convention 138](#) (1973), article 2(3).

<sup>31</sup> See [Worst Forms of Child Labour Convention 182](#) (1999).



## Case studies

### Sugarcane industry El Salvador

In 2004, civil society organisation Human Rights Watch (HRW) reported the use of child labour in the sugarcane industry in El Salvador. The report stated that children worked long hours and used dangerous instruments, such as machetes, in doing so. Up to one third of all workers in that sugar industry were said to be under the age of 18.

In the [report](#), experts stated that work in the sugarcane industry was the most dangerous form of agricultural work. Five years later, HRW [reported](#) that child labour in the sugar industry had been slashed by almost three-quarters since 2004, according to statistics from the Salvadorian Ministry of Education.

FUNDAZUCAR is a charitable foundation established in 1998 by all of the sugarcane mills of El Salvador. The foundation has collaborated with the International Labour Organization's International Programme on the Elimination of Child Labour (IPEC).

By 2009, IPEC had assisted more than 7,000 child workers to leave the sugarcane industry, as well as prevent 13,000 children from entering the industry. The collaboration with FUNDAZUCAR was crucial in this respect, as it helped IPEC gain access to sugarcane farms to which it might not otherwise have had access.

FUNDAZUCAR has also set up informal education centres to help children that have left school to work in the sugar industry to return to school again. The foundation also trains teachers to include discussions about child labour in school curriculum. Furthermore, efforts are being made to raise awareness of child labour issues with parents, and to develop frameworks for age verification in sugarcane industries.

The work completed by FUNDAZUCAR and its partners reportedly led to a decrease by [92 per cent](#) in children working in the sugarcane industry between 2004 and 2014.

## Cosmetics sector

### India

L'Oréal and Lush, headquartered in France and the UK respectively, are two multinational cosmetics retailers. In their cosmetic products such as eyeshadow, nail polish, lipstick and others, the companies have used the mineral mica to achieve a special shimmer.

India produces 60 per cent of the world's mica. Jharkhand, an underdeveloped region of India, hosts major mica deposits. According to an [investigative report from 2014](#), the production of mica is largely dependent on an unskilled workforce, often including children. The report found that although some of the children at the mines in Jharkhand said that they attended school and only worked at the mine after returning from school, others were enrolled in schools only to never show up. The children earn low wages (around US\$1 a day), but this amount was crucial to the families' incomes, thus forcing the children into work at an early age.

L'Oréal owns cosmetics brands like Lancôme, Maybelline, Redken and Yves Saint Laurent. L'Oréal [responded](#) to the report by saying that it expected that its suppliers were in compliance with the company's purchase conditions and terms, which prohibits child labour.

L'Oréal said that it now sources less of its mica from India to avoid being involved in child labour. It added that its main suppliers, such as Merck, were in a better position to comment on the work undertaken to ensure the elimination of child labour.

Merck, one of the largest pharmaceutical companies in the world, [stated](#) that it used a transparent tracking system to ensure control over its mica supply chain. It had developed direct business relationships and sourced mica directly from mines rather than via intermediaries to reduce the possibility of child labour in its supply chains. It also conducted regular independent audits of its business partners. Finally, it had reduced its reliance on Indian suppliers.

Lush, the British cosmetics retailer, [stated](#) that for several years it had required its suppliers to guarantee that their mica production was free from child labour. However, after media reports of the use of child labour in mica mines, it decided to discontinue all use of mica in its products.

Anti-Slavery International, an international human rights organisation, [claims](#) that audits, similar to Merck's system, often fail to find evidence of child labour since they only get a glimpse of some working conditions and the audit systems could be afflicted by corruption.

Further reports of child labour in the Jharkhand mica mines, implicating the cosmetics industry again emerged in October 2015, as well as in June 2016.

## Chocolate sector Côte d'Ivoire

The chocolate industry has been plagued for many years by serious and substantiated allegations of child labour in their supply chains, particularly regarding sourcing from Côte d'Ivoire.

These allegations led, for example, to the Harkin-Engel Protocol of 2001, an international agreement whereby companies within the cocoa industry committed to the eradication of child labour within their supply chains.

For example, Swiss food giant Nestlé's [code of conduct for suppliers](#) explicitly prohibits child labour, though it concedes that no company which sources cocoa from Côte d'Ivoire can guarantee the complete eradication of child labourers from the supply chain at this point in time.

In 2012, Nestlé adopted an action plan for "responsible sourcing" of cocoa from Côte d'Ivoire, including the roll-out of monitoring and remediation plans across suppliers. It also committed to increasingly sourcing cocoa through its [Cocoa Plan](#), certified as child labour free.

Hershey's is one of the largest chocolate producers and manufacturers in North America and the world. It reported in its 2014 Corporate Sustainability Report that it continued with its pledge to use 100 per cent certified sustainable cocoa by 2020 and that it was partnering with sourcing groups and non-governmental organisations to ensure it fulfilled its pledge.

The company's [Supplier Code of Conduct](#) clarifies that it has zero tolerance for the worst forms of child labour and that children are not allowed to work when they should be attending school.

Despite these initiatives, lawsuits have been brought and remain against Nestlé, Hershey's and others in the chocolate industry regarding child and forced labour in supply chains. One suit began in California in 2005 against Nestlé, Cargill and Archer Daniels Midland, and remains unresolved after an appeal decision in 2014 permitted the case to proceed. A further Appeals Court confirmed that decision in 2015, despite dissent from eight judges. In January 2016, the companies appealed the decision to the [US Supreme Court](#) but the court declined to hear the case, keeping in place the Appeals Court ruling.

In September 2015, a new class action lawsuit by a consumer rights law firm was filed against Nestlé, Hershey's and Mars, in a Californian court. The allegations concern the alleged failure by the companies to disclose the pervasive use of child labour in their supply chains. The consumer lawsuit was dismissed in early 2016 on the grounds that California consumer law does not demand the disclosure of child labour on product labels.

A report from [Tulane University in 2015](#), commissioned by the US Department of Labor, found that hazardous child labour is in fact increasing in the West African cocoa sector rather than decreasing. The report also however found that more children in the cocoa industry are attending school.

# ARTICLE 25: RIGHT TO PARTICIPATE IN PUBLIC LIFE

## Related rights:

ICCPR article 1 (Right of self-determination)

ICESCR article 1 (Right of self-determination)

ICCPR article 19 (Rights to freedom of opinion and expression)

ICCPR article 21 (Right to freedom of assembly)

ICCPR article 22 (Right to freedom of association)

The right to participate in public life concerns the right of citizens to take part in the conduct of public affairs and to freely choose representatives to perform governmental functions on their behalf. This right delineates specific aspects of the right to political participation such as the rights to vote and to be elected in free and fair elections, and a right of equal access to positions within the public service. Any conditions that restrict political rights must be established by law and be based on objective and reasonable criteria. An example of such a condition is the requirement of a reasonable minimum age for voters.

Positive measures should be taken by governments to overcome barriers to free and fair voting, such as illiteracy, inadequate transport and communication networks in remote regions, language barriers or poverty. It is important that information and ideas about public and political issues are communicated freely.

Media companies have a role in ensuring balanced reporting and that they are not unduly influenced by the government or other political parties or persuasions. Media monopolies are a cause for concern in this regard as they may restrict the airing of diverse political opinions. The right of equal access to the public service is of relevance to private companies that take on public service contracts, and therefore take over traditional functions of government such as utilities companies and private prisons. Companies can also facilitate enjoyment of this right by allowing employees time off to vote, and by participating in campaigns to promote greater civic participation.

More information on article 25 can be found in the UN Human Rights Committee's [General Comment 25](#) (1996).

## Case studies

### Telecommunications sector

#### Egypt

Vodafone is one of the world's major telecommunications companies.

During the Egyptian revolution of 2011, tens of thousands of Egyptians marched against the country's authoritarian regime. The protesters used social media and text messages to organise the protests. Vodafone was providing telecommunications services in Egypt at the time, and its services were therefore of great importance to the protesters.

In late January 2011, the Egyptian government attempted to curb the demonstrations. It ordered Vodafone, along with other telecommunications companies, to turn off their services. Vodafone followed the orders and left customers without voice services for 24 hours and internet for five days.

A few days later, Egyptian authorities changed their strategy. The services were restored. Vodafone was then ordered to send out text messages in support of President Hosni Mubarak, the main target of the protesters. The messages were not attributed to the government, so it was not clear to recipients that the messages were crafted by the government itself.

The Institute of Human Rights and Business ([IHRB](#)) criticised Vodafone's decision to immediately comply with the orders and argued that there were a range of other steps that the company should have taken. Instead of complying with the order, the IHRB suggested that Vodafone could have asked for written explanations from the government, argued its case, or warned its customers. In addition, IHRB said that Vodafone should have considered withdrawing from Egypt.

Vodafone issued a [statement](#) on its actions in Egypt on 3 February 2011, and a further statement on [22 February](#). It explained that it was obliged to comply with Egyptian law, and that its actions were partly motivated by concern for the safety of staff. Regarding the initial shutdown of its services, it explained that the government had the technical ability to shut down its network without its cooperation, which would have meant that it would take much longer to restore the services. Regarding the pro-government text messages, Vodafone stated that it was again forced to comply with Egyptian law, and that it had "protested to the authorities that the current situation regarding these messages is unacceptable." It said that it had made it "clear that all messages should be transparent and clearly attributable to the originator".



# ARTICLE 26: RIGHT TO EQUALITY BEFORE THE LAW, EQUAL PROTECTION OF THE LAW, AND RIGHTS OF NON-DISCRIMINATION

## Related rights:

ICCPR article 2 (Ensure rights without discrimination)

ICCPR article 3 (Ensure equal enjoyment of rights by men and women)

ICESCR article 2 (Ensure rights without discrimination)

ICESCR article 3 (Ensure equal enjoyment of rights by men and women)

The International Covenant on Civil and Political Rights contains prohibitions on discrimination on many different grounds including race, colour, sex, language, religion, political or other opinion, national or social origin, property, and birth or other status. The latter ground is open-ended and has been interpreted to include statuses such as disability, marital status, age, sexual orientation, gender identity, nationality, and health status (e.g. HIV/AIDS).

Discrimination means any distinction, restriction, exclusion or preference made on one or more of the grounds listed above that has the purpose or effect of reducing or removing altogether equality of opportunity or treatment for the victim. Article 26 prohibits discrimination in relation to the enjoyment of all rights, including economic, social and cultural rights, as well as other legal rights that may be offered by a State. Prohibited discrimination may be direct, where a person is treated less favourably than another person due to a reason related to a protected characteristic. For example, an exclusion from a job application process for people over fifty would constitute direct discrimination on the basis of age. Prohibited discrimination may also be indirect, where a seemingly neutral law, policy or practice disproportionately impacts on the enjoyment of human rights by a group of people based on a protected characteristic. For example, if a voluntary management training program that increases a candidate's chances of promotion is only offered on Friday lunchtimes, that would constitute indirect discrimination on the grounds of religion or belief due to the disproportionate detrimental impact upon those committed to Friday religious observance.

Not every differentiation of treatment constitutes discrimination in breach of article 26. Distinctions are permitted if they are based on reasonable and objective criteria with the purpose of achieving a legitimate aim.

For example, it is normally legitimate for a film director to discriminate on the grounds of sex when casting for a female character.

Companies' activities can impact on the right of non-discrimination of their workforce, business partners and customers. Each of these stakeholders should be treated without discrimination, for example in recruitment, pay and training for workers and in the provision of services to customers. Workers are particularly vulnerable to discrimination by employers. They should not be discriminated against or harassed, nor should they be disciplined without fair procedures.

Companies may sometimes need to take positive actions in order to combat discrimination, such as the installation of facilities to enable access for persons with a disability. In certain circumstances, it is acceptable for companies to take 'affirmative action' – positive steps taken to help a particular group that has suffered entrenched long-term systemic discrimination in order to reverse that trend. These measures may sometimes entail 'positive' or 'reverse' discrimination. For example, there may be a set quota for the number of women to receive management training by a company in order to increase the representation of women in senior positions, if women are under-represented at that level.

More information on the right of non-discrimination is found in the UN Human Rights Committee's [General Comment 18](#) (1989), as well as [General Comment 28](#) on the equality of rights between men and women (2000).

A right of non-discrimination is also found in article 2(2) of the ICESCR, and is discussed by the Committee on Economic, Social and Cultural Rights in its [General Comment 20](#) (2009).

# Case studies

## Luxury department sector United States

Barneys is a high-end US retailer which sells clothing, accessories, shoes and more, at flagship department stores in major cities in the US.

In 2013, Barneys was accused of racial profiling at its department stores in Manhattan. An engineering student filed suit after claiming that the store, and the police, accused him of credit card fraud after assuming that he could not afford a US\$300 belt. He claimed the mistake was caused by racial profiling.

In a second incident, a female shopper claimed she was surrounded by police after leaving the store, having bought a US\$2,500 handbag. The police demanded to know why the debit card she had used had no name on it. She explained that it was a temporary card. She later also filed suit on the basis of alleged racial profiling.

Barneys [responded](#) that it had “zero tolerance” for discrimination and that it stood by its long record of supporting all human rights. It undertook a process to review its policies with a civil rights expert, and to establish dialogue with community leaders on the matter.

New York’s Attorney General conducted a nine month investigation into Barneys, involving its customers and staff. Complaints were made of discrimination against minority customers, for example, that they were subjected to disproportionate surveillance by door guards.

The [Attorney General’s Civil Rights Bureau ultimately found](#) that Barneys lacked comprehensive written policies on racial profiling, and race-neutral criteria for investigations of possible shoplifting and/or fraud. It also lacked explicit policies on the use of force and the treatment of persons detained on suspicion of crimes by store guards. Finally, the Bureau found that Barneys lacked adequate record-keeping policies with regard to searches, stops, and detentions made by its loss-prevention staff and local police.

Barneys and the Attorney General’s office reached an agreement on how to ensure that all customers enjoyed equal access to Barneys’ stores, regardless of their race or ethnicity. Barneys agreed to settle the lawsuits for US\$525,000. It also agreed to implement new policies to prevent discrimination against minority customers. These policies include the retention of an independent anti-profiling consultant, improved record-keeping regarding the actions of loss-prevention staff, the adoption of an anti-profiling policy and the provision of anti-profiling training to employees.

The Attorney General stated that the settlement would correct past wrongs, and that the new framework should ensure that they were not repeated.



## Construction sector Europe

Skanska, a Swedish construction multinational, operates in Europe and North America and employs approximately 58,000 people.

Skanska's UK arm has been awarded for its inclusion and community engagement policies. The company promotes the '[Skanska Way](#)' – a set of operational, environmental and human resources policies.

Skanska has a [Diversity and Equality Policy](#), which is actively promoted amongst its employees. In its FAQ, the company states:

*"Diversity without inclusion results in problems such as conflicts, harassment, employee turnover etc. Inclusion without diversity results in low capacity for change, low creativity and increased risk of making major mistakes because of "group think". Therefore we need to be both diverse and inclusive".*

The company has a [Code of Conduct](#) which addresses issues such as diversity, inclusion, health and safety and corruption. It is supplemented by a [Supplier Code of Conduct](#), which reaffirms its commitment to the UN Global Compact, the Universal Declaration on Human Rights, and International Labour Organization treaties.

The company held a 'Changing the Face of Construction' industry event in London in 2015, aimed at leading the push for more diversity in the infrastructure sector, especially the inclusion of more women.

In an attempt to achieve its 2020 goal of a more diverse workplace, Skanska is aiming to recruit young people, people from underprivileged backgrounds, ex-offenders and ex-military personnel. It is also reviewing, for example, team building exercises because activities, such as watching football or horse racing, may exclude some people on cultural or religious grounds.

Approximately 28 per cent of Skanska's current workforce is female, but the company is aiming to improve female representation at the operational level (in construction and engineering), as well as in support roles. Its policies encourage managers to consider solutions for employees with commitments outside work, including flexible working patterns. It has also joined the UK's national Women in Science and Engineering (WISE) campaign.

# ARTICLE 27: RIGHTS OF MINORITIES

## Related rights:

ICCPR article 1 (Right of self-determination)

ICESCR article 1 (Right of self-determination)

ICESCR article 15 (Rights to take part in cultural life and to benefit from scientific progress)

The article recognises the rights of members of ethnic, religious or linguistic minorities to enjoy their own culture, to practise their religion, and to speak their language. Indigenous peoples are included within the protection of article 27. Their interests may also be protected under article 1 (the right to self-determination) of both International Covenants (ICCPR and ICESCR).<sup>32</sup> The article also applies to migrants, including recently arrived migrants.

Companies can facilitate enjoyment of this right by, for example, promoting diversity in their workplaces and places of business. This may take the form of permitting employees to observe religious holidays, wear traditional attire, or through the provision of employment opportunities for minorities.

Protection of the culture of minority groups may include protection of a way of life associated with use of the land through traditional activities such as hunting or fishing. Companies may find themselves dealing with an evolving set of claims and social pressures at the intersection of corporate activity and minority rights. Consultation is crucial and should take place with indigenous and minority communities whenever decisions are made that may impact on their lands, livelihoods and culture. The claims of minorities will sometimes come into conflict with economic development projects. Such projects are more likely to be compatible with article 27 if the affected peoples have been consulted and their cultural needs taken into account in the design of the relevant projects.

More information on article 27 can be found in the UN Human Rights Committee's [General Comment 23](#) (1994).

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<sup>32</sup> While indigenous peoples often constitute a minority in the States in which they live, they are groups that have distinct identities and corresponding rights under international law distinct from those of ethnic, linguistic and religious minorities. [ILO Convention 169](#) and the [UN Declaration on the Rights of Indigenous Peoples 2006](#) are considered more specific and helpful instruments in protecting indigenous peoples' rights.

## Case studies

### Mining sector Sweden

Beowulf Mining is a British mining company focused on mining operations in Sweden and Finland.

Beowulf and its subsidiaries applied for an exploitation concession to exploit iron ore deposits in Kallak North (in northern Sweden) from the Swedish government in 2014. However, concerns arose over the impact of the proposed mining activity on the cultural rights of the Sami community, the Indigenous peoples of northern Sweden. The Sami's traditional livelihood is reindeer herding and as such, they travel between the mountains in the summer and the coast in the winter. Some local residents believe the development of the mine could effectively destroy their traditional livelihoods, harming the article 27 rights of the Sami community.

Beowulf initially [responded](#) that the project would lead to an important economic boom in a town that had seen a constant decline in population over the past decades.

In [October 2015](#), the Mining Inspectorate of Sweden recommended to the Swedish government that the Exploitation Concession be granted to Beowulf. As of June 2016, no Concession had been granted.

Beowulf stated in [March 2016](#) that “detailed studies into local reindeer herding businesses have been completed as part of the EIA [Environmental Impact Assessment] for Kallak North, and that precautionary, protective and compensatory frameworks have been established”. Beowulf stated that it intends to develop and embed these frameworks into management plans in consultation with the Sami people. It also stated that it is already engaging in “ongoing communications” with the Chairmen of the two most affected Sami villages and referenced its [open letter](#) to the Chairmen.

While Beowulf proposes to conduct the mining project “in a way that respects the Sami’s wishes”, reports suggest that the Sami in the relevant area remain [opposed](#) to the mining project moving forward at all.





CHAPTER 4:

# THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

# ARTICLE 1: RIGHT OF SELF-DETERMINATION

Please refer to the commentary regarding article 1 of the International Covenant on Civil and Political Rights (ICCPR) on page 13, which is identical to article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

# ARTICLES 2 TO 5: OVERARCHING PRINCIPLES

Whereas articles 1, and 6 to 15, are substantive rights in the International Covenant on Economic, Social and Cultural Rights and therefore explained in some detail, together with their relevance to companies, articles 2 to 5 are overarching principles and are outlined below for the sake of completeness and to satisfy any curiosity on the part of the reader. As overarching principles, articles 2 to 5 cannot be applied individually but only in conjunction with a specific right in the ICESCR.

**Article 2** contains the general obligations for a State in relation to the economic, social and cultural rights contained in articles 1 and 6 to 15. Article 2(1) recognises that not all States have the resources to ensure full implementation of all the rights immediately and allows a State to implement the rights progressively to the maximum of its available resources.

States' general obligations under the ICESCR are discussed in further detail in [General Comment 3](#) (1990) and [General Comment 9](#) (1998) from the Committee on Economic, Social and Cultural Rights.

[Article 2\(2\)](#) obliges States to guarantee the enjoyment of the rights set out in the ICESCR, prohibiting any distinctions, exclusions, restrictions and limitations by both public authorities and private bodies, based on a person's colour, gender, religion, ethnic, social or national origin, political or other opinion, property, birth or other status. The Committee on Economic, Social and Cultural Rights (CESCR) has further interpreted the principle of non-discrimination to prohibit discrimination based on age, sexual orientation, gender identity, health status (such as HIV/AIDS) and disability.

Non-discrimination is a fundamental and overarching principle of international human rights. While economic, social and cultural rights may be implemented progressively, States have immediate obligations to guarantee their enjoyment without discrimination. This means that States have a responsibility to ensure that businesses carry out their activities and provide services in a non-discriminatory way. Reasonable and objective distinctions are permitted. For more discussion of the

issue of discrimination, please see the commentary on article 26 of the ICCPR. Article 2(2) is discussed in further detail in [General Comment 20](#) (2009) from the Committee on Economic, Social and Cultural Rights.

[A limited exemption from the principle of non-discrimination is contained in article 2\(3\) which gives developing States the right to decide the extent to which they will guarantee the economic rights of non-nationals, bearing in mind their human rights obligations and level of development.](#)

**Article 3** requires States to ensure that all rights are enjoyed equally by men and women. States are allowed to take positive action to eliminate conditions that contribute to gender discrimination. States are not permitted to condition their actions to ensure non-discrimination and gender equality on the extent of available resources; these obligations must be respected fully and immediately. Article 3 is discussed in detail in [General Comment 16](#) (2005) from the Committee on Economic, Social and Cultural Rights.

**Article 4** specifies that the rights in the ICESCR can be limited by the State "only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

**Article 5** is known as a 'savings clause'. It specifies that the ICESCR will not be used by anybody (whether it be government or another entity, such as a corporation) as a justification for engaging in an act aimed at destroying the rights of others. Nor can it be used as an excuse to lower domestic standards.

# ARTICLE 6: RIGHT TO WORK

## Related rights:

ICESCR article 7 (Right to enjoy just and favourable conditions of work)

ICESCR article 8 (Right to form trade unions and join a trade union and the right to strike)

The right to work recognises the right of everyone to the opportunity to make their living by work, which they freely choose or accept.<sup>33</sup> This implies that one should not be forced to exercise or engage in employment, and that potential workers have a right of access to a system of protection guaranteeing access to employment. It also implies the right not to be unfairly deprived of employment. Even though the prohibition of forced labour is not explicitly included, it may be derived from the right to free choice of employment. Work as specified in article 6 must be ‘decent work’. This means work that respects the fundamental rights of the person as well as the rights of workers in terms of conditions or work safety and remuneration. The right to work includes the prohibition of arbitrary dismissal.<sup>34</sup> The right to work is very closely linked to rights in article 7 to just and favourable working conditions and trade union rights in article 8. These rights are considered as being parts of the overall right to work.

The right to work does not guarantee that everyone will have the job they want, or even a job, but it requires that full employment be an explicit aim of governments and outlines the progressive steps that should be taken by governments in order to help people find employment. These steps include the provision of technical and vocational guidance, training programs, policies and programs to promote full and productive employment, and other initiatives to give people the necessary skills to find decent work.

Governments also have an obligation to ensure non-discrimination and equal protection of employment. This means that governments have an obligation to ensure the right of access to employment, especially for disadvantaged and marginalised individuals and groups, and to avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalised individuals or groups.<sup>35</sup> For persons who are unable to find jobs, other provisions of the Covenant provide for relevant rights, such as a right to social security (article 9 ICESCR).

A company that has significant activities as one of the ‘main players’ regarding the provision of employment, in areas where a government lacks the capacity or willingness to fulfil its commitments, may be expected by stakeholders to play a part in helping to secure fulfilment of the right to work. Companies of all sizes and in all locations may impact on their workers’ right to work if they arbitrarily or unfairly dismiss workers. Even where such practice may be legally permissible under local law, many stakeholders now expect companies to exhibit a higher standard of behaviour in line with international standards and good practice.

More information on article 6 can be found in [General Comment 18](#) (2006) from the Committee on Economic, Social and Cultural Rights.

<sup>33</sup> See ILO Declaration on Fundamental Principles and Rights at Work 1998, ILO Convention 122 concerning Employment Policy (1964), and ILO Recommendation 169 on Employment Policy (Supplementary Provisions) (1984).

<sup>34</sup> See also ILO Convention 158 concerning Termination of Employment (1982).

<sup>35</sup> See also ILO Convention 111 on Discrimination in Respect of Employment and Occupation (1960).



## Case studies

### Sports footwear sector Indonesia

The German company Adidas is one of the world's major sportswear companies, with a presence in over 150 countries worldwide.

PT Panarub Dwikarya Bena (PDB) is a sports footwear factory based in Indonesia, which was previously a subcontractor to Adidas (it worked as a contractor for Adidas's Indonesian business partner PT Panarub).

A demonstration at the PDB factory in July 2012, involving approximately 1,600 workers, was organised by SBTGS, a trade union. The strikers demanded back payment due to the alleged non-payment of legally prescribed wage increases. The strike took place without notice, and continued for over a week.

PDB claimed that the strike had been illegal, and its duration meant that those workers had lost their entitlement to work. The majority of the striking workers were fired.

In response, Adidas told the factory's management to reconsider the decision and reinstall the workers, regardless of whether it was acting in accordance with Indonesian law. When PDB refused to do so, Adidas released an official statement in August 2012 saying that it would not use the company as a subcontractor until a solution to the problem had been found. Adidas said that it was up to a court to decide whether the strike was in fact illegal or not, rather than factory management. Adidas also collaborated with the local International Labour Organization office, local labour lawyers and Indonesia's Ministry of Manpower, to try to ensure the rights of the workers were respected.

In [October 2012](#), Adidas clarified that 1,059 workers had been effectively terminated. Of that number, 287 officially resigned, while the status of the other 772 remained uncertain. It urged the company and SBTGS to enter into formal mediation. It reiterated its determination not to have subcontracted orders placed with PDB until the matter was satisfactorily resolved.

The PDB factory apparently shut down in 2013, according to an Adidas statement released in 2015.

In August 2015, the Clean Clothes Campaign, an organisation dedicated to improving working conditions for workers in the garment industry, [reported](#) that mediation between PDB and its workers had not been effective. According to the report, some of the workers that were fired in 2012 were still urging Adidas to resolve the case.

In [November 2015](#), Adidas provided a response to the matter, referring to its efforts to resolve the dispute in 2012. It noted that PDB was not performing subcontracted work for it at the time the dispute arose. As PDB had shut down, Adidas urged SBTGS and its relevant first tier supplier, Panarub, to resolve the matter.

Adidas also referred to the Freedom of Association Protocol, which supports freedom of association and union rights in Indonesia for those working in the sportswear industry. While stating that it was "instrumental" in the development of that Protocol, Adidas conceded that it only applied to first tier suppliers such as Panarub, rather than subcontractors to those suppliers such as PDB.

In a further statement in December 2015, Adidas reiterated that work could only be subcontracted with its explicit permission. It also stated that subcontractors, alongside major suppliers, had to comply with its workplace standards.

The Clean Clothes Campaign responded that "enforceable brand agreements" such as the Freedom of Association Protocol should cover all levels of the supply chain. It again called on Adidas to "work actively to secure a negotiated agreement" between the union and the Panarub group. In [February 2016](#), it published an overview of the situation, and again urged Adidas to help resolve the dispute. It clarified that 346 workers continued to seek fair severance pay.

This illustrative example is also relevant to article 8 of the ICESCR.



# ARTICLE 7: RIGHT TO ENJOY JUST AND FAVOURABLE CONDITIONS OF WORK

## Related rights:

ICESCR article 6 (Right to work)

ICESCR article 8 (Right to form trade unions and join a trade union and the right to strike)

The right to enjoy just and favourable working conditions has various components, which are all highly relevant to the actions of companies as they concern the treatment of employees. The interpretation of article 7 is influenced by the corresponding International Labour Organization (ILO) Conventions and Recommendations, which elaborate in greater detail labour standards similar to those set out in the Covenant. Companies can have a significant impact on the enjoyment of the various rights in article 7 in their capacity as employers.

Workers must generally be provided with remuneration, which can include wages and other allowances such as health insurance and food allowances. A minimum wage should be 'fair', reflecting a worker's required responsibilities, skills and education, as well as the impact of the work on the worker's health, safety, as well as personal and family life. Wages should be sufficient to provide workers with a decent living for themselves and their families.<sup>36</sup> Companies must at least comply with minimum wages mandated by government legislation. Wages should be paid regularly and in full, without unauthorised deductions or restrictions.<sup>37</sup>

Workers should be paid equally for work which is of objectively equal value even if the relevant work is quite different. Care should be taken to ensure that women's work is not undervalued. True adherence to equal pay can only be achieved by ongoing objective evaluation of work, taking into account factors such as skills and responsibilities. Companies must also provide equal opportunities for promotion, subject to considerations of relevant criteria only, such as seniority and competence.

Working hours must be limited, ideally to an eight hour day excluding overtime, though flexibility is permitted according to certain workplace practicalities. States are increasingly moving towards a 40 hour week.<sup>38</sup> Workers

should enjoy at least one 24 hour period of rest a week, though two consecutive days is preferable. Workers should be permitted adequate time for rest and leisure including paid holiday leave of at least three working weeks per year for full time workers (with part time workers enjoying proportionate leave entitlements). Temporary contracts must not be used to avoid the granting of leave entitlements. Workers should not generally be expected to work on public holidays, which do not count towards annual holiday leave, and workers should receive compensatory extra pay if they work on public holidays.<sup>39</sup>

Businesses should take particular care to respect the rights of specific groups, such as women, younger and older workers, people with disabilities, migrant workers, domestic workers, agricultural workers, refugee workers, unpaid workers (e.g. interns), and those in the informal sector.

Companies should maintain adequately high standards of occupational health and safety, minimising workplace hazards.<sup>40</sup> Paid sick leave should also be provided, and ideally maternity and paternity leave. Flexible working arrangements should be applied, where practical, to facilitate work/life balances. All workers must work free from harassment, including sexual harassment, and bullying.

With regard to all working conditions, States should require employers to co-operate with independent inspection services to ensure compliance with legal requirements.<sup>41</sup>

More information on article 7 can be found in [General Comment 23](#) (2016) from the Committee on Economic, Social and Cultural Rights.

<sup>36</sup> See also ILO Convention 131 on Minimum Wage Fixing (1970). See also ILO Convention 94 on Labour Clauses (Public Contracts) (1949).

<sup>37</sup> See ILO Convention 95 on Protection of Wages (1949).

<sup>38</sup> See ILO Convention 1 on Hours of Work (Industry) (1919), and ILO Convention 30 on Hours of Work (Commerce and Offices) (1930). See also ILO Convention 47 on the Forty Hour Week (1935).

<sup>39</sup> See ILO Convention 132 on Holidays with Pay (1970), ILO Convention 14 on Weekly Rest (Industry) (1921) and ILO Convention 106 on Weekly Rest (Commerce and Offices) Convention (1957).

<sup>40</sup> See also ILO Convention 155 Concerning Occupational Health and Safety and the Working Environment (1981) and ILO Convention 161 on Occupational Health Services (1985).

<sup>41</sup> See also ILO Convention 81 on Labour Inspection (1947), and Protocol of 1995.

## Case studies

### Banking sector United States

The Amalgamated Bank was founded in New York City in 1923 by the Amalgamated Clothing Workers of America, with the belief that everyone should have access to affordable banking.

In 2015, many people across the US demanded an increase in the minimum wage, calling for a US\$15 minimum. Amalgamated Bank was the first financial institution to join the “[Fight for 15](#)” movement, when it signed a contract stipulating that all its workers would at least earn US\$15 an hour.

The bank [commented](#) that it did not only think it was the right thing for the bank to do, but that it was something

that all banks should do. The bank’s CEO said that “[i]f any industry in this country can afford to set a new minimum for its workers, it’s the banking industry.”

According to Amalgamated Bank’s own campaign, [#RaiseTheWage](#), over 45 million people live in poverty in the US, partly because the national minimum wage is too low.

The bank received an Eleanor Roosevelt Human Rights Award in 2016, “for demonstrating that corporate responsibility, workers’ rights and economic justice can go hand in hand in the financial industry.”

## IT manufacturing sector

### China

In 2010, Taiwanese company Foxconn was reported to be the world's biggest contract manufacturer of IT goods. For example, it supplied products to Apple, Dell, HP, Sony and Nintendo. In 2015, it was reportedly the biggest private employer in China with 1.4 million employees.

Between January and August 2010, 13 suicides and 3 more suicide attempts were reported at Foxconn's factories in China. Numerous commentators linked the deaths to Foxconn's working conditions. For example, in May 2010, nine Chinese sociologists released an [open letter](#), highlighting the plight of internal migrant workers at Foxconn.

Employees highlighted the tough working conditions at the time. They claimed they were not allowed to talk at work, and were expected to work for extremely long hours. After work, the employees would go back to a crowded dormitory. Even though the company offered extracurricular activities for the workers, few had the time to partake.

In May 2010, Foxconn decided to erect anti-suicide nets to prevent workers jumping off buildings, and to raise workers' wages by 20 per cent in 2010.

Apple, the multinational technology company with brands such as the iPhone, iPad, and the Mac personal computers, is one of the largest IT companies in the world. As a buyer of Foxconn products, Apple was criticised in 2012 for failing to act on warning signals regarding conditions at the Foxconn plant.

Apple's [supplier code of conduct](#) requires its suppliers to follow certain procedures and maintain certain standards. Moreover, the tech company issues annual supplier responsibility reports.

In January 2012, Apple became the first technology company to join the Fair Labor Association (FLA). In February, Apple announced an agreement with the FLA to conduct audits at Foxconn's factories in China. FLA was to independently assess the performance of Foxconn regarding the working and living conditions of employees. Foxconn promised to fully cooperate with the FLA, allowing it to access all areas of the factories.

In [March 2012](#), the FLA reported that it had found a number of serious violations of workers' rights at Foxconn's Chinese facilities, including "excessive overtime and problems with overtime compensation; several health and safety risks; and crucial communication gaps that have led to a widespread sense of unsafe working conditions among workers". The FLA stated that it had secured Foxconn's agreement to reduce working hours, to protect pay, and to improve health and safety standards.

In [December 2013](#), the FLA reported that Foxconn had completed or was ahead of schedule on 356 out of 360 action items, but that some actions relating to working hours remained incomplete.

In 2015, the tech news website [Re/code](#) published a story about its restricted tour of Foxconn facilities in Shenzhen in China. It reported that Foxconn offered mental health counselling as well as a 24-hour hotline service to workers who were suffering from clinical depression. Each dorm room in Foxconn's Shenzhen factory housed a maximum of eight people. Workers were also offered amenities such as running tracks, swimming pools, fast food and internet cafes, which could be accessed in the workers' free time.

## Fast-fashion retail sector United States

The fast-fashion retailer Forever 21 is one of the US's largest private companies, operating over 600 stores worldwide.

An investigation by the [US Department of Labor](#) uncovered evidence that Forever 21 was violating statutory requirements regarding minimum wage, overtime and record-keeping. The Department of Labor sought a court order to force the company to hand over relevant documents.

A spokesperson for the Department of Labor stated that “significant problems” had been found among the company’s suppliers, and that its investigators had “identified dozens of manufacturers producing goods for Forever 21 under sweatshop-like conditions”.

Forever 21 [responded](#) that it had offered to meet with the state agency and that it had “promptly responded” to the subpoena. Despite this assertion, in [2013](#) a US federal court granted the order to the Department of Labor to compel the production of documents relating to wages and conditions, indicating a lack of cooperation from the company.

Forever 21 has faced [several lawsuits](#) related to allegations over working conditions. A claim was filed against it in late 2015 over its allegedly “[exploitative scheduling practices](#)”. The allegation is that Forever 21 insists that employees be available on call, but fails to pay workers if they report for work as required but are then sent home. This lawsuit remains ongoing at the time of writing.

## Retail sector Bangladesh

Rana Plaza, a garment factory building in Bangladesh, collapsed in April 2013, killing 1,138 people. Another 2,600 were injured, many gravely.

Structural cracks in the building had been discovered the day before the collapse. While shops on the lower floors were shut, workers on the upper floors were ordered to come to work the next day. Thousands were at work the day of the collapse, allegedly due to pressure from management. Some workers have argued that the poor safety standards (and other poor labour rights standards) were prompted in part by the need to keep costs down in the supply chains of major brands, and to deliver goods in accordance with strict deadlines.

A number of [major garment brands](#) were reported to have subcontracted work in Rana Plaza at the time of the collapse, such as Wal-Mart, Benetton, C & A, J.C. Penney and Carrefour.

Since the factory collapse, more than 200 companies, trade unions, non-governmental organisations and workers' rights groups, and most of Europe's largest retailers, signed The [Bangladesh Accord](#), an agreement regarding the safety at factories in Bangladesh. The signatories committed to meticulous independent inspections at their factories and to pay for fire safety upgrades.

While The Bangladesh Accord is dominated by European companies, the similar [Alliance for Bangladesh Worker Safety](#), created in 2013 to boost safety in Bangladeshi ready-made garment factories, involves more US companies.

In 2015, [Human Rights Watch](#), a human rights NGO, reported that labour conditions for workers in the garment industry in Bangladesh remained poor and unsafe.

In 2016, the Clean Clothes Campaign, an NGO focused on justice in the garment industry, released a report on "[Rana Plaza: Three Years On](#)". It reported significant progress in the provision of compensation to victims, as well as the inspections regime implemented under The Bangladesh Accord. However, it reported that factories had a poor record of addressing safety defects that had been identified by inspections. The Clean Clothes Campaign called on "all Accord signatories to address these delays as a matter of urgency and to ensure enough funds are available to carry out the repairs needed". The NGO also expressed frustration over the lack of respect for freedom of association and union rights in the Bangladeshi garment industry.

While some progress has been made, there is more work to be done to ensure safe labour conditions in such factories.

# ARTICLE 8: RIGHT TO FORM TRADE UNIONS AND JOIN A TRADE UNION AND THE RIGHT TO STRIKE

## Related rights:

ICESCR Article 6 (Right to work)

ICESCR Article 7 (Right to enjoy just and favourable conditions of work)

ICCPR Article 22 (Right to freedom of association)

This article concerns the right of everyone to form trade unions and to join the trade union of his or her choice, subject to the union's own membership rules. This right may only be restricted by States in circumstances that are set down in law and are necessary to protect national security, public order, or the rights and freedoms of others. Trade unions themselves have rights to establish national federations or confederations, and for the latter to form or join international trade union groupings. Trade unions are permitted to function freely, subject only to limitations that are lawful and necessary to protect national security, public order or the rights of others. Finally, the article recognises a right to strike, which must be exercised in conformity with the reasonable requirements of a particular country's laws.

The core ILO Conventions governing freedom of association, the right to organise and collective bargaining,<sup>42</sup> complement the interpretation of this right. These Conventions dictate that workers should not be discriminated against because of trade union membership. Governments should implement measures and develop appropriate mechanisms to promote voluntary good faith negotiations between employers and employees' organisations, with a view to enabling them to work out collective agreements regarding the regulation of employment.

Company actions may impact on these rights if they prevent union membership and activity amongst employees or are in any way complicit in actions that restrict employees' rights to participate in union activity.

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<sup>42</sup> ILO Convention 87 on Freedom of Association and Protection of the Right to Organise (1948) and ILO Convention 98 on the Right to Organise and Collective Bargaining (1949).



## Case studies

### Car manufacturing sector Argentina

In 2002, a criminal complaint was filed by an Argentine federal prosecutor against former executives of Ford Motor Argentina, accusing them of being complicit in human rights abuses that took place during the country's military dictatorship between 1976 and 1983. According to the complaint, Ford executives helped the Argentine regime with abducting and mistreating workers and union organisers, among other allegations.

The filed complaint led to a [four-year criminal investigation](#). In 2006, the public prosecutor charged the former executives, claiming that the regime had operated a detention centre within company premises, where 25 employees and labour union leaders had been illegally detained and tortured. Ford responded that its involvement with the regime only amounted to requesting protection from the army against attacks by guerrilla groups.

In 2004, Argentinian workers and union members sued Ford Motor and Ford Motor Argentina in the US District Court in Los Angeles. The [lawsuit](#) stated that the company's management had worked together with the regime, allowing human rights abuses to take place at Ford's premises in Buenos Aires. Similar to the criminal complaint, the suit stated that 25 former employees and union workers were detained and tortured illegally. According to the plaintiffs, the company had provided information to the regime to stop union activities at the plant.

The US case stalled later the same year when plaintiffs withdrew their claim due to a precedent which required them to first bring an action in Argentina.

In 2006, [another lawsuit](#) was filed in Argentina against Ford Argentina on similar charges. The plaintiffs who were former workers of an Argentine Ford factory, stated that Ford deliberately wanted to stop all trade union activity taking place at company premises.

In 2007, Ford [acknowledged](#) that the Argentine Army had stationed some of its forces within Ford's factory, but that it was a completely independent action on behalf of the regime and unrelated to any decision by Ford. Ford also stated that it would keep collaborating with the Argentine authorities to provide all the help necessary "to clarify this situation". Ford added that it was committed to human rights values.

Three former Ford executives were [charged in 2013](#) with crimes against humanity concerning alleged kidnappings and torture of union workers at the Buenos Aires factory. The executives were accused of disclosing names, addresses, identification numbers and pictures of union workers to the military regime, which then tortured, interrogated and imprisoned those workers.

This case study also raises issues regarding trade unionist rights under article 22 ICCPR, as well as the right to be free from torture under article 7 ICCPR.



# ARTICLE 9: RIGHT TO SOCIAL SECURITY, INCLUDING SOCIAL INSURANCE

The right to social security encompasses the right to access and maintain benefits without discrimination. Governments are obliged to make available a system of social security. Such systems may involve contributory or insurance-based schemes, which normally entail compulsory contributions from the beneficiary and the beneficiary's employer (and sometimes the State), as well as universal or targeted schemes funded out of the public purpose. Social security benefits should be available to cover the following areas: health care and sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.<sup>43</sup> Social security systems should be affordable and sustainable, so as to provide for present and future generations, and should also provide for adequate benefits. The right has a redistributive character, and is essential in combating poverty. Its realisation can, for example, have a significant impact on the enjoyment of related rights, such as the right to an adequate standard of living and the right to health.

It is recommended that States adopt “social protection floors” to guarantee certain minimum levels of entitlement to their populations.<sup>44</sup> Social protection floors are aimed at alleviating poverty, social exclusion and vulnerability, and ensuring the availability, continuity and access to essential services such as water, health, education, sanitation and family-focused social work.<sup>45</sup>

The role of businesses in relation to the right to social security will vary depending on the national context. Generally, companies have a basic duty to ensure that legally mandated contributions to the system, in addition to those deducted from employee salaries and wages, are paid promptly to ensure that the government's ability to deliver social security payments or services is not undermined. Increasingly, employment laws also create obligations on companies to provide income and benefits for maternity, injury and so on. If companies operate private social security schemes, they must do so in a non-discriminatory manner and they should not impose unreasonable eligibility conditions. Finally, a company should not deny its workers their contractually agreed employment injury benefits.

For more information on article 9, see [General Comment 19](#) (2008) from the Committee on Economic, Social and Cultural Rights.

<sup>43</sup> See ILO Convention 102 on Social Security (Minimum Standards) (1952).

<sup>44</sup> See also ILO Recommendation 202 on Social Protection Floors (2012).

<sup>45</sup> See CESCR Statement on “Social protection floors: an essential element of the right to social security and of the sustainable development goals”, 14 April 2015.

## Case studies

### Insurance sector Australia

In Australia, private life insurers have generally been responsible for supporting most of those who cannot work due to 'total and permanent disability' and/or terminal illness. This will change as the country's new National Disability Insurance Scheme rolls out from June 2016.

CommInsure, the insurance branch of the Commonwealth Bank of Australia, is one of the largest private life insurers with approximately four million policy holders.

In March 2016, CommInsure was [publicly accused of delaying payments](#) in the hope that policy-holders would die before their claims were finalised.

CommInsure's former Chief Medical Officer became a whistleblower after unsuccessfully raising his concerns internally.

He was dismissed in August 2015 after notifying the company's board of the apparent impropriety. He alleged in a media interview that the insurer denied claims systematically to improve profitability. He also alleged that the company pressured medical experts into amending reports for this purpose.

After the scandal broke, the CEO of the Commonwealth Bank, of which CommInsure is a subsidiary, [apologised](#) publicly to affected customers. He also promised that out-of-date definitions of some medical complaints would be updated, and that an independent expert would oversee a claims panel to consider more complex problematic cases. CommInsure put both of these measures into practice in [April 2016](#).

### Supermarket sector United States

Kroger Company (Kroger) is one of the biggest supermarket chains in the United States and one of the largest retailers in the world. The chain operates more than 2,500 stores directly or indirectly through subsidiaries across North America, and employs over 400,000 workers.

In a move to improve social security for its workers, Kroger decided in 2015 to offer its transgender workers the options of drug therapy and gender [reassignment under its health benefit plans](#). The health benefits awarded to employees will cover gender reassignment up to US\$100,000 for eligible workers.

In an [internal memorandum](#), Kroger stated that the decision to offer such health benefits to its transgender workers was the result of educating Kroger's leaders on the special needs of the company's transgender associates. The company's new policy was announced after a number of state insurance regulators had criticised insurance companies for denying coverage for the specific medical needs of transgender people.

## Utilities sector Australia

Kildonan UnitingCare is a community-based social service organisation run by UnitingCare Australia, an agency of the Uniting Church in Melbourne, Australia. Kildonan has developed an innovative approach to help people get through financial hardship. They offer facilitative programs by partnering with government, business, and other community service providers.

One of these programs is CareRing. CareRing is a financial support program which partners with privately run utility suppliers, financial institutions and tertiary education providers. Where a partner organisation identifies a customer experiencing payment or financial difficulty, the customer is referred (with their permission) to CareRing. With a multi-disciplinary team of professionals from a range of backgrounds, such as financial counselling and family services, CareRing can respond to customers experiencing complex issues (such as family violence and mental health issues). Kildonan's CEO explained that the majority of their clients struggling to pay bills were families confronted by an unexpected crisis, who "need some time and need a bit of a break" to sort out difficult issues.

CareRing services are available to people who are customers of certain outlets, namely the ANZ and NAB banks, Western Water and Yarra Valley Water. CareRing has an open invitation for other utility providers to partner with them.

In instances of utility payment hardship, CareRing offers a 'Utility Home Visit' service to help customers find ways to reduce their energy and water use and save on bills, including support with budgeting and bill payment plans.

In 2015, CareRing's practices were included as a case study in a [draft report](#) by the Victorian government into utility bill payment hardship (the final report did not include case studies). As a case study, CareRing illustrated the benefits of utility providers partnering with social service organisations to support customers in times of financial difficulty. Measured outcomes included debt reductions, reduced pressures on partner organisations' hardship staff and increases in the number of the partnership organisations' sustainable and recurring payment arrangements.

# ARTICLE 10: RIGHT TO A FAMILY LIFE

## Related rights:

ICESCR article 7 (Right to enjoy just and favourable conditions of work)

ICCPR article 23 (Rights of protection of the family and the right to marry)

ICCPR article 24 (Rights of protection for the child)

According to this article the widest possible protection and assistance should be given to the family, particularly during its establishment, and while it is responsible for the care and education of dependent children. Special protection is given to mothers during a reasonable period before and after childbirth. Of particular relevance to companies, the right requires that during this period working mothers should be given paid leave or leave with adequate social security benefits.

Enhanced measures of protection and assistance should also be taken on behalf of all children and young people. Human rights standards do not impose an absolute prohibition on work by children, defined under the [Convention on the Rights of the Child](#) as persons less than 18 years of age. In some cases, work may be an important element of vocational training, such as in the case of apprenticeships, or a way of earning supplementary income. Children should, however, be

protected from economic and social exploitation and in particular they should not be exposed to work that is harmful to their morals or health, or dangerous to life, or likely to hamper their normal development. The 'worst forms of child labour' are absolutely prohibited, as is work that is incompatible with the right of children to free and compulsory education. Work by children must not interfere with their ability to attend school. States are required to set age limits below which the paid employment of child labour should be prohibited and punishable by law.

This article is relevant to companies insofar as certain work practices (including working hours and eligibility for leave) may hinder or enhance the ability of people to adopt a healthy work/life balance and spend quality time with their families. Companies also impact on the right if child labourers are found to be working directly for the company or within their supply chains.

## Case studies

### Technology sector

#### United States

Basecamp (formerly known as 37signals) is a web application company founded in 1999 with headquarters in Chicago. While based in Chicago, the company promotes a healthy work-life balance by allowing all employees to live and work wherever they want to.

In response to a rival company's campaign to promote flexible work locations due to technology, Basecamp (then 37signals) launched its own campaign called [#WorkCanWait](#). The idea behind the campaign was to encourage work-life balance, that would allow an employee to enjoy their leisure time free of work.

To further promote the health and well-being among its workers, Basecamp decided in 2012 to have a [four-day work week](#) during the summer, for a total of 32 hours worked in four days instead of 40 hours worked in five days. Some of the employees wished to work the fifth day, but the company maintained its position, stating it preferred long-term over short-term benefits. In defending the policy, the company's CEO stated, when the people are the company's biggest asset you cannot "burn [them] out."

# ARTICLE 11: RIGHT TO AN ADEQUATE STANDARD OF LIVING

## Related rights:

ICCPR article 12 (Right to freedom of movement)

ICCPR article 27 (Rights of minorities)

Article 11 guarantees the right to an adequate standard of living including adequate food, clothing, housing and continuous improvement of living conditions. It has also been interpreted as requiring adequate access to water. The rights to housing, food and water are discussed below.

## a) Right to adequate housing

The right to adequate housing is not merely the shelter provided by having a roof over one's head; it is the right to live somewhere in security, peace and dignity. This means that housing or shelter must fulfil certain basic criteria, such as security of tenure, availability of utilities and other services (e.g. sewage facilities and access to safe drinking water), affordability, habitability, accessibility, location and cultural adequacy of housing. Governments should take progressive steps towards the achievement of all aspects of the right.

Companies that provide housing for their workforce or the local community will find that they can impact directly, positively or negatively, on the enjoyment of the right. Companies may find their activities impact on the right to adequate housing if they are involved in land transactions that require population relocation or forced evictions, be this as landlords or to accommodate development projects or natural resource exploration. Those companies that engage in relocation or forced evictions will want to ensure that they act in accordance with human rights standards, and that those affected and their belongings are protected and secured during the relocation process. Forced evictions should be a last resort and feasible alternatives should be explored in consultation with the affected communities. Forced evictions are not inconsistent with the right to

adequate housing if procedural safeguards – such as comprehensive impact assessments, prior consultation and notification, provision of legal remedies, fair and just compensation, and adequate relocation – are deployed to minimise the adverse impacts, including on specific groups such as women and indigenous peoples.

For more information on the right to housing, see [General Comment 4](#) (1991) and [General Comment 7](#) (1997), both from the Committee on Economic, Social and Cultural Rights.

## b) Right to food

Food is vital for human survival and also essential as a means to fully enjoy all other rights. The human right to adequate food implies that food should be available and accessible to people in a quantity and of a quality sufficient to satisfy their dietary needs, free from adverse substances, and acceptable to their culture. The right to food includes the possibilities for individuals to feed themselves and their family directly by productive land and other natural resources (e.g. farming, animal husbandry, fishing, hunting and food gathering), as well as to purchase foods at markets and stores. Various steps should be taken by States to improve methods of production, conservation and distribution of food through, for example, the development of better farming systems, as well as ensuring an equitable distribution of world food supplies in relation to need.

Protective measures are required to prevent contamination of food and water supplies arising from, among other things, poor environmental hygiene or inappropriate handling at different stages of the food chain.



The right to food is particularly relevant to those companies that provide for the basic needs of their workforce and the surrounding community, and those whose core business is the supply of food. Respect for the right to food requires that company activities do not pollute, harm or otherwise interfere with local supplies of food, or people's ability to access them.

For more information on the right to food, see [General Comment 12](#) (1999) from the Committee on Economic, Social and Cultural Rights.

### c) Right to water

Water is a fundamental human right necessary for life and thus the fulfilment of all other rights. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. These uses include water for drinking, personal sanitation, washing of clothes, food preparation, as well as for personal and household hygiene. The water provided has to be of good quality, free from elements that might harm a person's health, and a minimum quantity of approximately 50-100 litres per person per day.

States are obliged to ensure that water services are delivered in an equitable and non-discriminatory manner, prioritising the most vulnerable groups and those who have traditionally faced difficulties in accessing adequate quantities of water. The right to water does not mean that water should be provided for free, but rather that water and water facilities must be affordable for even the most disadvantaged members of society. Individuals, communities and groups should be able to participate in decision-making processes that may affect their right

to water and should be given full access to information concerning water and sanitation matters. In the context of privatisation of water services, States must effectively regulate and control water service providers to maintain equal, affordable and physical access to sufficient, safe and acceptable water for personal and domestic uses.

Company activities can impact on the right to water if pollution and over-use of local water supplies significantly interfere with people's enjoyment of the right to water. The right is also particularly relevant to companies that provide water services and companies that provide for the basic needs of their workforce and the surrounding community. Companies can have a positive impact on the right to water through initiatives aimed at improving the accessibility and quality of water for local communities.

For more information on the right to water see [General Comment 15](#) (2003) from the Committee on Economic, Social and Cultural Rights.

## Case studies

### Real estate sector

#### Mexico

MIRA was founded in 2007 by Black Creek Group, an American private equity company focused on real estate development, particularly in Mexico. The company is developing urban middle-income housing in combination with commercial real estate to create environments where one can “live, work, shop and play”, all in the same place.

One of MIRA's projects, called Tres Santos, is in Todos Santos, a coastal town located south of the Baja California Peninsula in Mexico. According to the company, the project will combine city life and life in the countryside with beach life. The community is being developed in a pristine fishing village, designated by the Mexican Secretariat of Tourism as a “Pueblo Mágico”, a magical village. The new community will embrace local culture and natural beauty and offer the members of the community a “harmonious relationship with the land, people and self”, [according to MIRA](#).

In 2014, MIRA announced an agreement with Colorado State University (CSU) to develop CSU's Todos Santos Center within the Tres Santos community and donate it to the university. The donation included three buildings and farm land that would be used as an international centre for the university. The president of CSU said that the project would help improve the engagement with the local Mexican communities and the local people.

However, some people in the local community [oppose the development](#) in Todos Santos, stating that the development in the old fishing village is not sustainable, regardless of what the company is suggesting. According to these local residents it is unsustainable to bring thousands

of people and workers into a desert environment that lacks water. They noted that the coastal town has already suffered two water droughts in the last 50 years. They claimed the only solution available would be a desalination plant, which would have negative impacts on the environment. Local fishermen from the fishing village claimed that the development of the community had already impacted negatively on the local fishing industry.

CSU's cooperation with MIRA has also been criticised. The university responded that the real estate project was controversial, but that its centre was independent of that project. A spokesperson added that CSU's expertise would be useful for the surrounding community and the region. CSU's centre was inaugurated in April 2015.

MIRA responded to the critique in media on the difficulties for local fishermen and water shortages. It stated that the [Tres Santos community's water use](#) was to be added to the pre-existing municipal supply from a desalination plant which had received environmental approval. Water use would also be a focus at the CSU research centre. MIRA added that it supported the local fishermen, and that the beach development would not use any part of the beach that was reserved for use by local fishermen.

However, MIRA's claims regarding a zero impact on water use have been disputed, and a call has been made for the environmental impact assessment of the desalination plant to be made public. The development [remains controversial into 2016](#).

## Mining sector Zambia

Vedanta Resources is a mining company headquartered in London, with operations in Zambia and seven other countries around the world. Konkola Copper Mines (KCM) in Zambia, a subsidiary of Vedanta Resources, is one of Africa's largest copper producers. KCM is also one of the country's largest private sector companies with more than 16,000 employees.

In 2006, a lawsuit was filed against KCM in Zambia over water pollution, after the company had allegedly dumped hazardous waste into Zambia's Kafue river. The lawsuit was filed on behalf of roughly 2,000 residents and stated that livelihoods had been lost because of the pollution as fish had died. It was claimed that local people had also experienced health problems, including lung pain and skin diseases.

In 2011, a [High Court in Lusaka](#) held that KCM was guilty of the alleged water pollution, and ordered the company to pay around £900,000 in compensation, in a judgment which was highly critical of the company.

KCM appealed the decision. The [Supreme Court of Zambia](#) upheld the High Court's decision in 2015. Damages were however decreased since only a few of the claimants could prove that their medical conditions were related to the pollution.

A few months after that decision, Leigh Day, a London law firm, filed suit in a London high court against Vedanta and KCM on behalf of around 1,800 Zambian residents. The [claim](#) relates to "personal injury, damage to property, loss of income and loss of amenity and enjoyment of land arising out of alleged pollution and environmental damage".

Vedanta Resources [responded](#) to news of the London lawsuit by stating that all of its subsidiaries cared about "the health and safety of their employees, the wellbeing of surrounding communities and the environment."

In May 2016, a UK High Court judge ruled that the suit could proceed, ruling that UK courts had proper jurisdiction over the matter. In June, Vedanta signalled that it would appeal that ruling.



## Energy sector Indonesia

On 28 May 2006, PT Lapindo Brantas, an Indonesian energy company, commenced drilling a borehole in East Java in search of gas. During the second stage of drilling, a mud volcano eruption began. The mudflows have continued to at least June 2016 (at the time of writing this publication), though the flow has at least slowed since its peak of 180,000 cubic metres of mud a day. It is predicted that the flow could continue until the year 2041.

The “Sidoarjo mud flow” has affected 12 villages. Tens of thousands of people have lost their homes and livelihoods, and been forced to relocate. People in the area have suffered a thorough disruption to their rights to an adequate standard of living under article 11 of the ICESCR.

PT Lapindo Brantas faces allegations that its activities triggered the eruption. Two hypotheses have been raised as to the cause: the company’s drilling or an earthquake. A [study published in Nature Geoscience in 2015](#) attributes the cause to drilling activity, while a [study published in the same journal in 2013](#) concludes that an earthquake is to blame.

In 2009, the Supreme Court of Indonesia dismissed a case against PT Lapindo Brantas, clearing it of wrong-doing with respect to the mud volcano eruption. Nevertheless, presidential decrees have dictated that the company pay compensation to the many affected persons, and the government has also agreed to itself compensate some victims, namely those outside the directly affected area.

The Constitutional Court of Indonesia rejected an application by private individuals in 2012 to transfer the entire compensation burden to the company.

Komnas HAM, Indonesia’s Human Rights Commission, [announced](#) in 2012 that PT Lapindo Brantas was responsible for the man-made mudflow, which amount to a violation of fifteen human rights, including “the right to life, safety, health, housing, employment, education, social security and education”.

Komnas HAM estimated that between 40,000 and 60,000 people had been forced to relocate because of the mud that flooded over 10,000 homes. It called on the company to fully comply with a designated compensation scheme.

In 2015, the Indonesian government offered to buy 2 per cent of the company’s assets, and use the proceeds to compensate victims, in order to allegedly assist the company to fulfil its obligations. In July 2015, the government agreed to give the company a loan to cover outstanding claims.

In January 2016, the company announced plans to resume drilling in the affected area, so it could begin to pay back its government debt. The plan has been condemned by WALHI (Indonesian Forum of the Environment), an Indonesian NGO, given the proximity of the proposed drilling to the mudflow site, and the uncertainty over the cause of the ongoing mudflow.

As of May 2016, 100 families are still awaiting compensation, ten years after the disaster began.

## Diamond industry Zimbabwe

Anjin Investment is a Chinese-Zimbabwean joint-venture that mines and processes diamonds from the Marange diamond fields in eastern Zimbabwe, one of the world's major diamond deposits.

The Marange diamond fields have been known for “blood diamonds”, a name attributed to diamonds mined in a war or conflict zone. These diamonds are often used to finance an army's efforts to take control or stay in control. Accordingly, the diamond trade is regulated under the Kimberley Process. In late 2011, the Kimberley Process lifted a ban on sales of diamonds from the Marange fields, a decision criticised by certain human rights groups. The issue of blood diamonds raises numerous human rights issues, such as the right to life under article 6 of the ICCPR.

In 2012, concerns were raised that water pollution from the diamond processing site was allegedly killing cattle drinking the water, and endangering the livelihood of local residents. Residents who were drinking the water also

allegedly became sick. According to a local human rights organisation, the [Center for Research and Development](#), the diamond processing site released hazardous chemicals and waste into the river.

A few months later, local residents and the Zimbabwe Environmental Law Association (ZELA) [filed a lawsuit](#) in Zimbabwe against Anjin Investments, as well as two other diamond firms, for pollution of water resources. According to the lawsuit, three different rivers were polluted with chemicals, metal deposits and dirt. The lawsuit stated that the pollution led to risks of contracting cancer, typhoid, and other diseases. Allegedly, the pollution had negatively affected the ecosystem (including livestock and fisheries), and the livelihoods of thousands of households in the nearby district.

In 2015, the [High Court of Zimbabwe](#) delivered an interim judgment. Anjin and the other defendant mining companies had argued that the case should be dismissed on various procedural grounds. The Court disagreed, and ruled that the case could continue.

## Beverage sector India and Global

PepsiCo is a global food and beverage brand, supplying beverages and food to consumers in over 200 countries.

Since the company requires substantial water supplies for its production of beverages and food it has made considerable efforts to ensure what it calls a “[positive water balance](#)” for its operations. This means striving to replenish more water than it consumes. Pepsi was one of the first multinational companies to publicly acknowledge the right to water as a human right. Pepsi states that it has worked with local communities to achieve sustainable water use in its operations and in its supply chains.

Pepsi had set itself a goal of improving its water use efficiency by 20 per cent by 2015. It claims to have in fact achieved a 26 per cent reduction by 2015.

In 2011, the [India Resource Center \(IRC\)](#) questioned Pepsi and how it accounted for its claim of achieving positive water balance in its Indian operations. IRC accused Pepsi of using the positive water balance campaign to boost its reputation, rather than actually being a global leader in water conservation.

Pepsi [responded](#) that Pepsi India had achieved positive water balance by 2009, which was confirmed in an audit by Deloitte, a consulting firm, using accepted auditing practices. Pepsi added that it was committed to constant improvement of its water usage practices.

The Stockholm International Water Institute (SIWI), a Swedish non-governmental organisation focused on water-related challenges, awarded Pepsi its [Stockholm Industry Water Award in 2012](#). The organisation praised Pepsi on its efforts to increase water efficiency, and said that the company had “set and achieved a high standard for its own operations, and has demonstrated that responsible water use makes good business sense”.

In 2016, [Oxfam](#) released a report on the sustainability performance of major food companies including Pepsi. On “water”, Pepsi was rated 5/10, indicating that it had made “some progress”, which was above “poor” but below “fair”, in Oxfam’s opinion. Oxfam had given Pepsi the same score in 2013. Oxfam acknowledged Pepsi’s respect for the human right to water, but stated that it and other food companies had to move from policy commitments to practice in respecting water rights.

Pepsi responded that it recognised respect for human rights (including the right to water) as a “journey” where there is “always more to do”. It stated that it would continue to “engage with stakeholders and organisations, including Oxfam, as [it worked] to find solutions to these complex issues.”

# ARTICLE 12: RIGHT TO HEALTH

This article recognises the right to the highest attainable standard of physical and mental health. States must take measures to prevent, treat and control diseases, reduce infant mortality and provide for the healthy development of children, improve all aspects of industrial and environmental hygiene, and to create conditions that will ensure universal access to appropriate medical services and medical attention in the event of sickness. The right includes the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from non-consensual medical treatment and experimentation. People must have access to the underlying building blocks of good health, such as adequate nutrition, housing, safe and potable water, adequate sanitation, healthy working conditions and a healthy environment.

Company activities and products can impact on the right to health of employees, and are expected to ensure that their operations and products do not impact on the right to health of people, such as workers, consumers and local communities. Special consideration should be made in relation to vulnerable sectors of society, such as children and adolescents, women, disabled people or indigenous communities. Companies are expected to ensure compliance with national legislation (including occupational health and safety regulations, and consumer and environmental legislation) and international standards where domestic laws are weak or poorly enforced. Even though informal workers are often not covered by domestic legislation, companies should take steps to ensure that any persons within their supply chains are not exposed to occupational health and safety dangers. In countries where communicable diseases, such as HIV/AIDS and malaria, are prevalent, many companies now

seek to assist local health care by offering treatment to employees and by bolstering the health infrastructure and delivery networks. Prior informed consent and the participation of workers in the definition of such programs are essential aspects of the right to health. HIV testing should be confidential and no discrimination should follow from the results.

Pharmaceutical companies in particular have a responsibility to respect the right to health that goes beyond the right to health of their own workers. NGOs and others increasingly look to pharmaceutical firms to help provide access to high-quality, essential medicines for poorer communities, for example through tiered pricing or via flexible approaches to intellectual property protection. Pharmaceutical companies also face demands to increase their investment in the research and development of medicines and treatments for otherwise neglected diseases (such as river blindness, leprosy and sleeping sickness) that have typically ceased to be prevalent in developed countries, but are still common in developing countries.

Companies from sectors where the risk of pollution from their activities is particularly great, such as extractive firms and chemical companies, may face close scrutiny over the policies and systems they have in place to ensure that pollution does not negatively impact on the right to health of workers and members of surrounding communities.

For more information on article 12, see [General Comment 14](#) (2000) from the Committee on Economic, Social and Cultural Rights. See also [General Comment 22](#) (2016) on the right to sexual and reproductive health.

## Case studies

### Sports sector Australia

In early 2013, the Australian Football League (AFL) club Essendon FC (Essendon) announced that it was being investigated over the possibility that some of its players had been injected with performance enhancing drugs in 2012 by a sports scientist who was then under its employment. The sports scientist had since left the club. The matter was subsequently investigated by the Australian Sports Anti-Doping Authority and the AFL.

The club itself commissioned an internal review in 2013. The [resulting report](#) described a “pharmacologically experimental environment never adequately controlled or challenged or documented within the Club”.

The players were found not guilty of taking banned drugs by an AFL anti-doping panel in early 2015. However, the World Anti-Doping Authority (WADA) appealed that ruling. In early 2016, 34 past and present Essendon players were found to have taken banned substances by [the Court of Arbitration for Sport](#) (in Lausanne, Switzerland). The players were given two-year bans, though the bans were backdated, which means they can resume playing in 2017. The players’ appeal failed.

To date, neither Essendon nor the sports scientist has identified all of the drugs that were administered to the players.

It is unclear if there are any long-term [health implications](#) for the players. With this in mind, Essendon and the AFL Players Association have set up a long-term health program to monitor the players who were administered with injections.

One of the 34 players, ex-rookie Hal Hunter, has taken Essendon to court to try to force it to reveal exactly what he was injected with. Despite his legal action, the club has not provided him with complete records of the substances injected. It is unclear if the club is able to. The uncertainty over the injections has been termed a “[psychological sword of Damocles](#)” by a psychologist.

In 2016, the club pleaded guilty to, and was convicted of, two offences against the Occupational Health and Safety Act 2004 (Vic). It was fined AUD\$200,000 for failing to keep a safe workplace.

This case study also raises issues under article 7 of the ICESCR.



## Banking sector Global

Standard Chartered is a banking and financial services company. Headquartered in London, it operates in over 70 countries worldwide, with a strong presence in Asia, Africa and the Middle East.

In 2001, the bank joined a private sector initiative to eliminate HIV/AIDS called Business Fights AIDS (now [GBCHealth](#)), and announced a mission to reduce the number of new HIV infections worldwide through education. The education programs covers the education of individuals on how to prevent the spread of HIV as well as education for its own staff on non-discrimination with regard to HIV/AIDS.

The bank's commitment is embodied in its "[Positive Living](#)" education program, which it has run since 1999. For example, the relevant website conveys facts about HIV/AIDS in an accessible way.

In 2009, the program was [awarded](#) the "Business Excellence Award for Best Community Investment Programme" from the Global Business Coalition against HIV/AIDS, Tuberculosis and Malaria.

In 2012, the bank partnered with the [Liverpool Football Club](#) in the UK to raise awareness on World AIDS Day. It has since partnered with the club on other awareness raising initiatives regarding health issues.

In [2014](#), Standard Chartered began partnering with MTV's Staying Alive Foundation to support projects for young people in some of the markets most affected by the disease.

Standard Chartered is one of a number of major companies making an effort to combat HIV/AIDS, and to reduce the stigma and discrimination associated with the disease.



# ARTICLES 13 AND 14: RIGHT TO EDUCATION

## Related rights:

ICCPR article 24 (Rights of protection for the child)

The aim of the right to education is “the full development of the human personality and sense of dignity”. Articles 13 and 14 guarantee all children the right to free and compulsory primary education. The right also requires progressive steps from governments aimed at the provision of secondary and higher education, including the provision of ‘fundamental’ education for those who could not complete primary education. The right to education also includes the right of equal access to education and equal enjoyment of education facilities, the freedom of parents and children to choose the type of education the children receive, and the freedom to establish educational institutions (subject to minimum educational standards). Educational facilities should be available, accessible, culturally and ethically acceptable, and flexible so as to be able to adapt to society’s changing needs. For example, education should, where possible, adapt or at least acknowledge changing technologies, such as the modern importance of information technologies.

Companies have a vested interest in promoting the right to education for the development of skilled workforces. Companies may impact on the right to education where child labourers are directly employed or operate in their supply chains in a way that prevents those children from attending school. This right is also relevant in the context of any commitments made by a company to provide education to the children of workers or others in the local community. Companies that organise or provide such education should respect equality of access to education. Companies may also impact on the enjoyment of the right if, for example, their involvement with heavy construction or infrastructure projects limits access to nearby schools or results in damage to, or the destruction of, educational facilities.

For more information on articles 13 and 14, see [General Comment 11](#) (1999) and [General Comment 13](#) (1999) from the Committee on Economic, Social and Cultural Rights.

# Case studies

## Mining sector

### Ghana

Newmont Mining Corporation is a US mining company with operations in Ghana, among other countries worldwide. The company is one of the largest gold producers in the world.

One of the company's operations is the Akyem mine in the southern part of Ghana. After attaining a mining lease in 2010, the mine started production in 2013. In engagements with the "project-affected communities", Newmont installed the [Akyem Community Relations Unit](#) to work as a link between the company and the local communities.

One outcome of the community engagement is The Newmont Akyem Development Foundation Project ([NAkDeF](#)), designed to fund sustainable social investments in the local community. These investments include providing educational scholarships to select community members.

The deal struck between Newmont and the local communities meant that the company would contribute one dollar per ounce of gold produced and sold, and another one per cent of gross profits into NAKDeF. By early 2015, Newmont had contributed about US\$1 million into NAKDeF.

Journalists for Business Advocacy, an advocacy group focused on good business environment for small enterprises in Ghana, [praised Newmont's efforts with NAKDeF](#).

By [September 2015](#), NAKDeF had provided 400 students with scholarships to secondary, tertiary and vocational training institutions in that year. A number of schools and other educational facilities have also been funded.

## Telecommunications sector

### Myanmar

Telenor Group, a Norwegian telecom company, is one of the biggest mobile operators in the world. In 2014, Telenor Myanmar (Telenor), a subsidiary to Telenor Group, signed a telecommunications license agreement with the Myanmar government. It launched its mobile network in Myanmar later that year. Telenor is committed to providing accessible and affordable mobile communications to the Burmese population, aiming to cover 90 per cent of the population by 2020.

Myanmar Mobile Education Project ([myME](#)) is a non-governmental organisation designed to help provide education to children in need in Myanmar. In its efforts to promote education it focused on children working at teashops all over the country. Teashops are small street restaurants, often staffed by children that have been handed over by their families in desperation, depriving the children of their childhoods and education.

Telenor and myME decided to collaborate and created mobile classrooms to ensure that children in teashops (initially those which carry Telenor branding or sell the

company's SIM cards) continued to receive education. The mobile classrooms make education, including teachers and study materials, available for young teashop workers, offering them around six hours of school each week. Telenor will use its expertise to provide connectivity for the mobile classrooms and other necessary technological support.

The contract between Telenor and the teashops (those carrying its branding and selling its SIM cards) requires teashop owners to not hire anyone under the legal working age of 13, and to give all workers under the age of 17 access to education. Teashop owners will, in return, be provided with improved facilities and workers with better skills.

myME stated that it was pleased with the collaboration with Telenor since it could not eliminate the issues of child labour on its own. Telenor said that the project was in line with the ethics and principles of the company and that the education provided through myME would ensure the children could continue to grow and develop key skills, necessary in a modern society.



# ARTICLE 15: RIGHTS TO TAKE PART IN CULTURAL LIFE AND TO BENEFIT FROM SCIENTIFIC PROGRESS

## Related rights:

ICCPR article 27 (Rights of minorities)

Article 15 recognises the right of everyone to take part in the cultural life of society, to enjoy the benefits of scientific progress, and to receive protection for the moral and material interests resulting from their scientific, literary or artistic works. States should take steps to secure the fulfilment of the right, including actions necessary for the conservation, development and dissemination of science and culture. States should also ensure respect for the right to conduct scientific research and engage in creative activity. The benefits of international contacts and co-operation in the scientific and cultural fields should be recognised and encouraged.

The right to take part in cultural life encompasses the rights of individuals and communities to pass on their unique values, customs, language, religion and cultural references (e.g. music, ceremonies, sport, arts, methods of production). Cultural life incorporates culture as a living process, rooted in history yet dynamic and evolving. Cultural practises are essential to adding meaning to community life. People should be able to learn about their own culture. Cultural institutions should be supported, such as libraries, museums and sports stadiums. This right is of particular relevance to indigenous peoples who have rights to preserve, protect and develop indigenous and traditional knowledge systems and cultural expressions. Cultural diversity should be embraced, while forced assimilation must not take place.

The right for all to enjoy the benefits of scientific progress and its applications is designed to ensure that everyone in society can enjoy advances in this area, in particular disadvantaged groups. The UN Committee on Economic, Social and Cultural Rights has held that the rights belong exclusively to individuals or groups of individuals, rather than to corporations, and are not in any case the same as “intellectual property rights” as embodied in international trade agreements. The right includes the right of everyone to seek and receive information about new scientific advancements and to have access to any developments that could enhance their quality of life.

Company activities may influence this right, positively or negatively, through all fields of scientific research and development. It is argued that respect for intellectual property rights is needed to create the incentive for corporations to conduct research and development, which itself generates innovations and inventions that benefit society. However, some argue that the acquisition and exercise of intellectual property rights over the results of scientific research restricts the enjoyment of the right in Article 15. Companies can positively impact this right by sharing the benefits of scientific advances, including in the area of information technology and medicine.

For more information on article 15, see [General Comment 17](#) (2006) and [General Comment 21](#) (2009) from the Committee on Economic, Social and Cultural Rights.

## Case studies

### Pharmaceutical sector Europe

Biopiracy is a concept that describes when organisations and companies use indigenous knowledge for profit, without permission and without sharing those profits with the community from which the knowledge originates. Such commercial exploitation often takes the form of claims of intellectual property protection, such as patent or copyright.

A [study](#) conducted by the African Union in 2005 concluded that Africa was losing US\$15 billion annually due to a lack of protection against biopiracy in the medicines, cosmetics and agricultural industries.

Efforts have been made in recent years to curb the effects of biopiracy. In response to 1990s biopiracy cases such as the patenting of turmeric, India created a [Traditional Knowledge Digital Library](#) to establish “prior art” on millions of medicinal formulations to show that they are not novel (and therefore not able to be patented). “Prior art” is publicly available information which helps to disprove a patent claim of originality.

In 2012, [35 firms were fined](#) by the Brazilian government for acts of biopiracy. The same year, a British

pharmaceutical firm, [Nicholas John Larkins, was blocked from patenting ginger](#) as a cold remedy, as India was able to show that the patent claim drew on traditional knowledge.

In 2015, the Institute for Development Research (IRD) in Marseille, France was granted a patent on a plant-derived compound to be used for a new malaria drug. The Institute did not acknowledge the contribution to their research of local communities in French Guiana, whom they had observed using the plant in question in traditional medicine.

In February 2016, after accusations of biopiracy from a legal academic and a French human rights NGO, the IRD [announced](#) that it would enter a profit-sharing arrangement with the local communities through the French Guianan government. This arrangement also includes a guarantee to keep the communities in question informed about the drug development process, and to make the eventual commercial product affordable in Guiana.





## Sports sector United States

The US NFL team, the Washington Redskins, has been under pressure to change its name. The pressure arises as its moniker is an offensive and derogatory colloquial term used to describe Native Americans.

However, the Washington team management maintains: “our name represents a tradition, passion and heritage that honours Native Americans.”

Five Native Americans brought a case in the US Patent and Trademark Office, seeking [cancellation of the registration of the Redskins' trademark](#) on the basis that the name was disparaging. Their claim was granted in June 2014. This decision was confirmed on appeal in July 2015. The football franchise has filed a further appeal, which is still to be decided (as of June 2016).

Loss of the trademark would not mean that the team would have to change its name. It would mean that it could not protect its brand from being used by others, which would lead to considerable financial losses on its sales of merchandise.

The team's owner has [stated](#) that a change of name would “taint its brand and lead to billions in lost revenue”. However, some [experts](#) disagree, pointing out that a name change could lead to new merchandising opportunities.







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